

UNESCO
WORLD ANTI PIRACY OBSERVATORY

SOUTH AFRICA

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I. Legislation

1. Copyright laws

Copyright is protected in South Africa through international Agreements, the [Copyright Act No 98 of 1978](#), the Registration of Copyright in Cinematograph Films Act No 62 of 1977, as well as other legislations related to enforcement of copyright or affecting copyright protection.

The Copyright Act was adopted on January 1, 1997, and published in the Government Gazette/Staatskoerant on 30/06/1978, No. 6092 and 10/07/1992, No. 14129.

2. Other laws

Other laws or regulations pertaining to anti-piracy measures and copyright enforcement are:

- The Counterfeit Goods Act No 37 of 1997
- The Criminal Procedure Act No 51 of 1977
- The Trade Marks Act No 194 of 1993
- The Custom and Excise Act No 91 of 1964
- The Merchandise Marks Act No 17 of 1941
- The Trade Practices Act No 76 Of 1976
- The Electronic Communications and Transaction Act No. 25 of 2002

3. Latest developments and perspectives

There are no planned amendments.

4. Summary of legislation

- *Exclusive rights of the authors and of the owners of neighbouring rights*

Copyright owners enjoy economic and moral rights.

Exclusive Rights of the authors

The exclusive rights are to do, to authorize others to do or to prevent others from doing any of the acts that are designated in respect of the categories of works eligible for copyright (Sections 6 to 11B and 20 of the Copyright Act).

a) *Economic Rights*

The Copyright owner of a **literary or musical work** has the exclusive right to do or to authorize the doing of any of the following acts in the Republic (article 6):

- a) reproducing the work in any manner or form;
- b) publishing the work if it was hitherto unpublished;
- 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;
- 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.

The copyright owner of an **artistic work** has the exclusive right to do or to authorize the doing of any of the following acts in the Republic (artistic 7):

- a) reproducing the work in any manner or form;
- b) publishing the work if it was hitherto unpublished;
- 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;
- 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.

Copyright owner of a **cinematograph film** has the exclusive right to do or to authorize the doing of any of the following acts in the Republic (article 8):

- a) reproducing the film in any manner or form, including making a still photograph therefrom;
- 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;
- 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.

b) Moral Rights

Notwithstanding the transfer of the copyright in a literary, musical or artistic work, in a cinematograph film or in a computer program, authors enjoy moral rights (Section 20 of the Copyright Act) which include the right to:

- claim authorship of the work
- 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

Exclusive Rights of the owners of neighboring rights

Copyright owner of a **sound recording** has the exclusive right to do or to authorize the doing of any of the following acts in the Republic (section 9):

- 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

The Copyright owner of a **broadcast** has the exclusive right to do or to authorize the doing of any of the following acts in the Republic (article 10):

- 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;
- b) rebroadcasting the broadcast;
- c) causing the broadcast to be transmitted in a diffusion service, unless such service is operated by the original broadcaster.

The Copyright owner of a **programme carrying signals** has 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 (article 11).

The Copyright owner of a **published edition** has the exclusive right to make or to authorize the making of a reproduction of the edition in any manner (article 11A).

The Copyright owner of a **computer program** has the exclusive right to do or authorize the doing of any of the following acts in the Republic (article 11B):

- 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.

- *Exceptions and limitations to copyright / Permitted Acts in relation to copyright works*

Limitations to the exclusive rights of the copyright owner are contained in sections 12 to 19B of the Copyright Act and include the following:

- For literary or musical works :

Fair dealing for the purposes of research, private study, personal or private use; criticism or review of that work or of another work; reporting current events in a newspaper, magazine or similar periodical; or by means of broadcasting or in a cinematograph film; judicial proceedings; quotation; illustration in any publication, broadcast or sound or visual record for teaching; reproducing the 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, and if the work is of an exceptional documentary nature, it may be preserved in the archives of the broadcaster, under conditions; reproducing in the press or by broadcast a lecture, address or other work of a similar nature which is delivered in public; reproducing in the press or by broadcast an article published in a newspaper or periodical, or in a broadcast, on any current economic, political or religious topic if such reproduction or broadcast has not been expressly reserved and the source is clearly mentioned; using the work 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.

The 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.

The copyright in a musical work shall not be infringed by a person (the “manufacturer”) who makes a record of the work or of an adaptation thereof in South Africa, whether from an imported disc, tape, matrix or otherwise, if records embodying the work or a similar adaptation of the work were previously made in or imported into South Africa 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; before making the record the manufacturer gave the prescribed notice to the owner of the copyright of his intention to make it; 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 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.

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 the previous paragraph are fulfilled in relation to such copyright.

Limitations related to literary and musical works shall mutatis mutandis apply with reference to cinematograph films, sound recordings, broadcasts, and published editions. Where sounds embodied in a sound-track associated with a cinematograph film are also embodied in a record other than such a soundtrack 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.

- For artistic works:

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; 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; and if any person without the consent of the owner makes or makes available to the public three-dimensional reproductions or adaptations of the authorized three-dimensional reproductions provided specific conditions are met.

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.

- For program-carrying signals:

The copyright in program-carrying signals shall not be infringed by the distribution of short excerpts of the programme so carried that consist of reports of current events; or as are compatible with fair practice, and to the extent justified by the informatory purpose of such excerpts. The provisions of this section shall not apply with reference to a programme carried by programme-carrying signals representing a sporting event.

- For computer programs:

Limitations related to literary and musical works shall mutatis mutandis apply with reference to computer programs. 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 he makes copies thereof to the extent reasonably necessary for back-up purposes; a copy so made is intended

exclusively for personal or private purposes; and such copy is destroyed when the possession of the computer program in question, or authorized copy thereof, ceases to be lawful.

Excluded from copyright protection are official texts of a legislative, administrative or legal nature, or official translations thereof, speeches of a political nature, speeches delivered in the course of legal proceedings, and news of the day that are mere items of press information. However, the author of the aforementioned speeches shall have the exclusive right of making a collection thereof (Section 12 of the Copyright Act).

- *Protection of foreign works*

In addition to the works of South African citizens, the Copyright Act protects works of authors domiciled or resident in South Africa, legal persons incorporated under the laws of South Africa and works of architecture erected in South Africa or any other artistic work incorporated in a building or any other permanent structure in South Africa, whether or not the author is a qualified person (Section 3 of the Copyright Act).

Copyright protects also literary, musical or artistic work or a sound recording first published in South Africa; broadcast made in South Africa; programme-carrying signal emitted to a satellite from a place in South Africa; cinematograph film first published or made in South Africa; published edition first published in the Republic; computer program first published or made in South Africa (Section 4 of the Copyright Act)..

The Minister may by notice in the Gazette provide that any provision of the Copyright Act specified in the notice shall in the case of any country so specified apply (Section 37 of the Copyright Act):

- 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;
- 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;
- 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;
- 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;
- 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.

- *Period of copyright protection*

Copyright protection is provided for the lifetime of the author and 50 years from the end of the year in which the author dies (or the author who dies last in the event of co-authored works) for literary, musical or artistic works other than photographs - or 50 years from the end of the year in which the first publication, public performance, offer for sale to the public of records, or broadcasting of such works or an adaptation thereof is done should any of these acts not have been taken place before; 50 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 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 for cinematograph films, photographs and computer programs; 50 years from the end of the year in which the recording is first published for sound recordings; 50 years from the end of

the year in which the broadcast first takes place for broadcasts; 50 years from the end of the year in which the signals are emitted to a satellite for programme-carrying signals; 50 years from the end of the year in which the edition is first published for published editions; 50 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 for anonymous or pseudonymous works - or 50 years from the end of the year following the author's death when the pseudonym adopted by the author leaves no doubt as to his identity or if the author of an anonymous or pseudonymous work discloses his identity during the above mentioned period (Section 3 of the Copyright Act).

- *Registration*

Copyright in terms of the Act exists de facto. No registration is required or indeed possible, except in respect of cinematograph films, where optional registration is provided for (Section 26 of the Copyright Act).

5. International treaties

South Africa is a member of the following International Convention and Treaties on Copyright and Related Rights

- [Berne Convention on the Protection of Literary and Artistic Works](#)
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS)
- [WIPO Copyright Treaty](#) (WCT)
- [WIPO Performances and Phonograms Treaty](#) (WPPT)
- Cyber Crime Convention

II. Measures and Remedies

1. Copyright infringement

Copyright infringement is defined by section 23 of the Copyright Act as follows: "copyright shall be infringed by any person, not being the owner of the copyright, who, without the license 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".

The following acts constitute a copyright infringement when undertaken by any person without the licence of the owner of the copyright and at a time when copyright subsists in a work:

- importing an article into South Africa for a purpose other than for his private and domestic use;
- selling, letting, or by way of trade offering or exposing for sale or hiring in South Africa any article;
- distributing in South Africa 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
- acquiring an article relating to a computer program in South Africa, 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 South Africa.

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 (section 23 of the Copyright Act).

For internet copyright infringement South Africa rely on the Electronic Communications and Transaction Act No. 25 of 2002.

2. Remedies to protect copyright holders

The Copyright Act, the Counterfeit Goods Act and the Criminal Procedure Act provide for a number of remedies that may apply for protecting copyright and neighboring rights holders in the case of violations of their rights. These remedies include the following:

- Provisional measures may be taken to prevent an imminent or continuation of infringement of copyright, including inspection of any relevant goods wherever they are found; seizure and detention of any suspected counterfeit goods and, where applicable, the removal of the suspected counterfeit goods for the purposes of detention; collecting or obtaining evidence relating to the suspected counterfeit goods or the relevant act of dealing in counterfeit goods; conducting at, on or in such place, premises or vehicle whatever necessary search; and taking whatever steps may be reasonably necessary in order to terminate the relevant act of dealing in counterfeit goods. The powers conferred on an inspector to undertake the provisional measures may be exercised only on the authority of a warrant (Sections 4 and 6 of the Counterfeit Goods Act).
- Legal action may be instituted at the request of the copyright holder, the exclusive licensee or the exclusive sub-licensee, including fair and equitable civil judicial procedures (Section 24 to 26 of the Copyright Act and Section 3 of the Counterfeit Goods Act).
- Delivery, to the Plaintiff, of infringing copies or plates used or intended to be used for infringing copies or otherwise (Section 24 of the Copyright Act).
- Seizure, confiscation, forfeiture or the destruction of all infringing copies and all equipments or devices used in the manufacture of the infringing copies may be ordered by the court (Sections 20 and 34 of the Criminal Procedure Act and Section 10 of the Counterfeit Goods Act).
- Fair and adequate damages may be imposed including the payment of the amounts of benefits accrued to the defendant by reason of the infringement as the court may deem fit (Section 24 of the Copyright Law).
- Criminal sanctions may be imposed, in particular imprisonment for a minimum term not exceeding three years and/or a fine not exceeding 5,000 rand in the case of a first conviction, and imprisonment for a minimum term not exceeding five years and/or a fine not exceeding 10,000 rand in any other case for each article to which the offence relates (Section 27 of the Copyright Act and Section 19 of the Counterfeit Goods Act).
- Forfeiture and destruction of pirated goods to be applied at the end of the court proceedings (sections 31 to 34 of the Criminal Procedure Act No 51 of 1977).

3. Provisional measures

- Anton Pillar Orders
- Delivery up
- Interdicts
- Damages

Provisional measures may be taken to prevent an imminent or continuation of infringement of copyright, including inspection of any relevant goods wherever they are found; seizure and detention of any suspected counterfeit goods and, where applicable, the removal of the suspected counterfeit goods for the purposes of detention; collecting or obtaining evidence relating to the suspected counterfeit goods or the relevant act of dealing in counterfeit goods; conducting at, on or in such place, premises or vehicle whatever necessary search; and taking whatever steps may be reasonably necessary in order to terminate the relevant act of dealing in counterfeit goods. The powers conferred on an inspector to undertake the provisional measures may be exercised only on the authority of a warrant (Sections 4 and 6 of the Counterfeit Goods Act).

4. Penalties for copyright infringement

The Copyright Act, the Counterfeit Goods Act and the Criminal Procedure Act provide for a number of remedies that may apply for protecting copyright and neighboring rights holders in the case of violations of their rights. These remedies include the following:

- Provisional measures may be taken to prevent an imminent or continuation of infringement of copyright, including inspection of any relevant goods wherever they are found; seizure and detention of any suspected counterfeit goods and, where applicable, the removal of the suspected counterfeit goods for the purposes of detention; collecting or obtaining evidence relating to the suspected counterfeit goods or the relevant act of dealing in counterfeit goods; conducting at, on or in such place, premises or vehicle whatever necessary search; and taking whatever steps may be reasonably necessary in order to terminate the relevant act of dealing in counterfeit goods. The powers conferred on an inspector to undertake the provisional measures may be exercised only on the authority of a warrant (Sections 4 and 6 of the Counterfeit Goods Act).
- Delivery, to the Plaintiff, of infringing copies or plates used or intended to be used for infringing copies or otherwise (Section 24 of the Copyright Act).
- Seizure, confiscation, forfeiture or the destruction of all infringing copies and all equipments or devices used in the manufacture of the infringing copies may be ordered by the court (Sections 20 and 34 of the Criminal Procedure Act and Section 10 of the Counterfeit Goods Act).
- Fair and adequate damages may be imposed including the payment of the amounts of benefits accrued to the defendant by reason of the infringement as the court may deem fit (Section 24 of the Copyright Law).
- Criminal sanctions may be imposed, in particular imprisonment for a minimum term not exceeding three years and/or a fine not exceeding 5,000 rand in the case of a first conviction, and imprisonment for a minimum term not exceeding five years and/or a fine not exceeding 10,000 rand in any other case for each article to which the offence relates (Section 27 of the Copyright Act and Section 19 of the Counterfeit Goods Act).
- Forfeiture and destruction of pirated goods to be applied at the end of the court proceedings (sections 31 to 34 of the Criminal Procedure Act No 51 of 1977).

5. Requirements for foreign persons

Foreign persons are not required to obtain any special approvals, engage any special agents, or present any special documentation in order to gain access to national courts, customs officials, or police officials to obtain enforcement of their copyright in South Africa.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

The competent authorities in the jurisdiction responsible for enforcing the copyright law are:

- The National Prosecuting Authority (NPA)
- The South African Police Service (SAPS)
- The South African Receiver of Revenue Service (SARS)
- The Department of Trade and Industry (DTI)

b) Enforcement bodies entitled to act ex-officio in copyright infringement cases

The enforcement bodies are entitled to act ex-officio in copyright infringement cases.

Detailed provisions relating to Copyright enforcement are provided under the Counterfeit Goods Act.

c) Courts dealing with copyright cases

There are no specialized courts, which deal with copyright cases in South Africa but Chapter 3 of the Copyright Act provides for the establishment of a copyright tribunal (Sections 29 to 36 of the Copyright Act).

The court which has jurisdiction over criminal offence in copyright cases is the district or regional criminal court in whose jurisdiction the offence took place.

2. Enforcement at the border

The competent authorities responsible for administering applications for copyright infringements at borders are the South African Police Service (SAPS) and Customs.

The owner of the copyright in any published work may give notice in writing to the Commissioner for Customs and Excise ("the Commissioner") that he is the owner of the copyright in the work; and that he requests the Commissioner to treat as prohibited goods, during a period specified in the notice, copies of the work made outside the Republic which if it had been made in the Republic would be an infringing copy of the work, provided that the period specified in the notice 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 (Section 28 of the Copyright Act).

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 Section 28 of the Copyright Act applies shall be prohibited.

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 Section 28 of the Copyright Act.

The aforementioned provisions shall mutatis mutandis apply with reference to an exclusive licensee who has the right to import into the Republic any work published elsewhere.

The importer and the copyright holder shall notify in a timely fashion of the suspension of the release of the goods by the customs.

There is a time limit for the suspension of the goods by the customs authorities.

Detailed provisions relating to border enforcement are provided under section 15 of the Counterfeit Goods Act.

IV. Public Awareness

1. Awareness campaigns and actions

The National Prosecuting Authority of South Africa (NPA) has entered into a Memorandum of Understanding with the South African Federation of Copyright Theft.

The NPA also embarks on ad hoc awareness campaigns.

2. Promotion of legal exploitation

Chapter 5 of the Copyright Act contains various miscellaneous and supplementary provisions. Some of these provisions provide for the appointment of an advisory committee to recommend possible amendments to the Act, and vest the Minister with absolute power to control circulation, presentation and exhibition of any work or production (sections 40 and 45 of the Copyright Act).

3. Associations and organizations with awareness-raising purpose

4. Best practices

V. Capacity-building

1. Training

Establishment of specialized units and intersectoral groups

The issue of licensing in South Africa is handled by the Independent Communication Authority of South Africa and under the Department of Communications. The Convergence Bill of 2003 was supposed to deal with the issue of licensing, however the Bill was later incorporated to the Electronic Communications and Transaction Act 25 of 2002.

2. Best practices

The following good sentences were imposed under the Counterfeit Goods Act:

The State v Marcus Mocke: R400 000.00 or 8 years imprisonment (400 DVD's)

The State v Azziz Ebrahim: R1.6 million fine

The State v Ghassan: 5 years imprisonment (2nd offender)

The State v H P D Booyesen: 18 months correctional supervision and 3 years suspended for 5 years.

VI. Other

- 1. TPM/DRM**
- 2. Licensing Schemes**
- 3. Optical Discs**
- 4. Hotlines**
- 5. Contact Details**

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