



COPYRIGHT AND PERFORMERS PROTECTION ACT




the dtic

Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

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A close-up, slightly blurred photograph of a hand holding a pencil. The hand is positioned over a wooden block with the letter 'D' on it. The background is a soft, warm light. The overall image has a high-key, ethereal quality.

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CONTENTS

DEFINITIONS	5
COPYRIGHT	9
What is copyright?	9
What can be protected using copyright?	9
What rights does copyright give me?	9
Can I register copyright?	10
What is the duration of copyright?	10
What is copyright infringement?	11
DESIGN	11
What is design?	11
How does the registration of a design benefit you or your business?	11
INTELLECTUAL PROPERTY (IP)	11
What is IP?	11
What is World IP Day?	11
PATENT	13
What is a patent?	13
Why are companies given patents?	13
What protection does a patent offer?	13
What are the requirements of patent protection?	14
Is a patent valid in every country?	14
How long does a patent last?	14
How do patents affect prices?	14
How do patents affect access to medicine?	14
What is a generic medicine?	15
How do generic medicines affect prices?	15
PERFORMERS PROTECTION	15
What is the Performers Protection Act?.....	15
TRADEMARK	17
What is a trademark?	17
How can I protect my trademark?.....	17
What right does trademark registration provide?.....	17
What are the benefits of registering a trademark?	17
How long does trademark protection last?	18
What kind of trademarks can be registered?.....	18



DEFINITIONS

Arbitrator is an independent person or body officially appointed to settle a dispute.

Arbitration is the use of an arbitrator to settle a dispute.

Artistic work includes paintings, sculptures, drawings, engravings and photographs; works of architecture, being either buildings or models of buildings; or works of craftsmanship.

Broadcast means a telecommunication service of transmissions consisting of sounds, images, signs or signals.

Broadcaster is a person who undertakes a broadcast.

Certificate of Incorporation is a legal document issued in the formalisation of enterprises.

Cinematograph film is the fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of images capable of being seen as a moving picture and of reproduction, and includes the sounds embodied in a soundtrack associated with the film, but does not include computer programs.

Cinematographer is the person by whom the arrangements for the production of the film were made.

Computer programmer is the person who exercised control over the making of the computer program.

Communication to the public is of a musical work, an artistic work, cinematograph film/ audiovisual fixation of a sound recording.

Copy means a reproduction of a work and, in the case of a literary, musical or artistic work, a cinematograph film or a computer program, also an adaptation thereof.

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculptures and films to computer programs, databases, advertisements, maps and technical drawings.

Distributor in relation to a programme-carrying signal is the person who decides that the transmission of the derived signal to the general public or any section thereof shall take place.

Distribution in relation to a programme-carrying signal means any operation by which a distributor transmits a derived signal to the general public or any section thereof.

Duration of copyright covers the lifetime of the author plus 50 years from the end of the year in which that author dies.

Equitable remuneration is equal pay for equal work.

Fixation includes the storage of sound and/or images or signals that represent sounds and/or images.

Indigenous work means a literary, artistic or musical work with an indigenous or traditional origin, including indigenous cultural expression or knowledge which was created by persons who are or were members, currently or historically, of an indigenous community and which literary, artistic or musical work is regarded as part of the heritage of such indigenous community.

Infringement means using works without the proper authorisation.

Literary and artistic works include musical, dramatic and dramatico-musical works as well as expressions of folk stories.

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 by the use of a record or any other means, and in relation to lectures, speeches and sermons, includes delivery thereof.

Performer is a person who either acts, sings, delivers, declaims, plays in or otherwise performs literary or artistic works.

Phonogram is the exclusively aural fixation of sounds of a performance or other sounds.

Programme-carrying signal is a signal embodying a programme that is emitted and passes through a satellite.

Published edition means the first print by whatever process of a particular typographical arrangement of a literary or musical work.

Rebroadcasting means the simultaneous broadcasting by one broadcaster of the broadcast of another.

Remedies include suing for damages, obtaining an interdict, and delivery of infringing copies/ plates used in making the infringing copies.

Reproduction is a copy of a fixation of a performance. Except a fixation of a performance or a reproduction of such a fixation, shall be taken to include a reference to the doing of that act in relation to a substantial part of the performance, the fixation or the reproduction, as the case may be.

Royalties means the payment of money to the author or composer for each copy of a book sold or for each public performance of a work.

Sound recording is the act of making a record of sound.

State-funded intellectual property means state ownership of state-funded copyright.

Traditional works include a derivative indigenous work and an indigenous work.

Transfer of rights means where the performer has consented to the fixation of his or her performance (subject to written contractual agreement).



COPYRIGHT

What is copyright?

Copyright is the legal term that describes rights given to a broad range of literary and artistic work. Copyright provides creators with exclusive rights to use or authorise others to use their work in certain ways, giving them the ability to control and receive payments. Additionally, rights related to copyright provide protection for performing artists (such as musicians and actors), producers and broadcasting organisations.

What can be protected using copyright?

- Literary works such as novels, poems, plays, reference works and newspaper articles
- Computer programs and databases
- Films, music compositions and choreography
- Artistic works such as paintings, drawings, photographs and sculpture
- Architecture
- Advertisements, maps and technical drawings
- Songs and sound recordings

Copyright protection extends to expressions only, and not ideas, procedures and methods of operation or mathematical concepts. Copyright may or may not be available for a number of objects, such as titles, slogans or logos, depending on whether they contain sufficient authorship. For a work to be eligible for copyright, it must be written down, recorded or otherwise reduced to material form.

What rights does copyright give me?

- Economic rights, which allow the rights owner to derive financial reward from the use of his/her works by others.
- Moral rights, which protect the non-economic interests of the author.

Most copyright laws state that the rights owner has the economic right to authorise or prevent certain use in relation to work or, in some cases, to receive remuneration for the use of his/her work, such as through collective management.

The economic rights owner of work can prohibit or authorise:

- its reproduction in various forms, such as printed publication or sound recording;
- its public performance, such as in a play or musical work;
- its recording, for example, in the form of compact discs or DVDs;
- its broadcasting by radio, cable or satellite;
- its translation into other languages; and
- its adaptation, such as a novel into a film screenplay.

Examples of widely recognised moral rights include the right to claim authorship of a work and the right to oppose changes to a work that could harm the creator's reputation.

Can I register copyright?

In many countries, and according to the Berne Convention, copyright protection is obtained automatically without the need for registration or other formalities. Most countries nonetheless have a system in place to allow for the voluntary registration of works. Such voluntary registration can help solve disputes over ownership or creation, as well as facilitate financial transactions, sales and the assignment and/or transfer of rights.

In South Africa, copyright automatically comes into being since no registration is required, with the exception of cinematographic films. Works, however, must meet the following criteria:

1. Must be original and reduced to material form, i.e. written down, recorded or represented as digital data; and
2. The author must be a qualified person, i.e. South African citizen or domiciled in South Africa, and corporate entities must be registered.

What is the duration of copyright?

The duration of copyright is the lifetime of the author plus 50 years after his/her death. The creator is conferred with exclusive rights to authorise the reproduction and distribution of the work, its public performance and adaption. Copyright is transferrable by assignment, but this must be done in writing. Once the copyright period ends, the work goes into the public domain and reproduction is free. Credit for the work or authorship will, however, forever belong to the creator.

What is copyright infringement?

An act of infringement is the use of works without the proper authorisation. Remedies that are available in case of infringement include suing for damages and seeking a court interdict.

PERFORMERS PROTECTION

What is the Performers Protection Act?

The Act regulates the rights of performers, producers and broadcasters. It provides for protection of the performance of literary works (books), music (songs or instrumental music) and artistic works staged in South Africa or countries belonging to the Rome Convention. Musicians generate income from live performances, which are regulated through the Act.

The rights of performers are recognised because their creative is necessary to give life to literary, musical and artistic works. The Act does not in any way restrict or affect the rights provided for by any other law relating to copyright in literary and artistic works.

Royalties are paid to the copyright owner for performances based on contractual terms. Protection of copyright and related rights serves the twin objectives of preserving and developing national culture and providing a means for commercial exploitation.

INTELLECTUAL PROPERTY (IP)

What is IP?

IP refers to creations of the mind, such as inventions, literary and artistic work, designs and symbols, as well as names and images used in commerce.

IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invest or create. By striking the right balance between the interest of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.



What is World IP Day?

In 2000, the World Intellectual Property Organisation (WIPO) Member State designated 26 April as the World Intellectual Property Day. WIPO is a global forum for IP services, policies, information and cooperation. The day is meant to celebrate human creativity, to acknowledge the socio-economic importance of IP and the protection thereof, create awareness about IP rights and encourage creativity and innovation by citizens. The event was celebrated for the first time in 2001 and targets the general public, youth, academics, organised and small business, the legal fraternity and government departments involved in the field of IP.

TRADEMARK

What is a trademark?

A trademark is a brand name, slogan or logo, or any combination thereof that an organisation uses in trade to distinguish the goods and services that it provides from those of others.

How can I protect my trademark?

At the national/regional level, trademark protection can be obtained by filing an application for registration with the national/regional trademark office and paying the required fees.

At the international level, you have two options: you can file a trademark application with the trademark office of each country in which you are seeking protection, or you can use WIPO's Madrid System, which is a one-stop solution for registering and managing trademarks worldwide. File one application, in one language and pay one set of fees to protect your trademark in the territories of up to 97 members, allowing you to manage your portfolio of trademarks through one centralised system.

What right does trademark registration provide?

In principle, registration will confer an exclusive right to the use of the trademark. This means that the trademark can be exclusively used by its owner, or licensed to another party for use in return for payment. Registration provides legal certainty and reinforces the position of the rights holder, for example, in case of litigation.

What are the benefits of registering a trademark?

- No one else will be allowed to use your trademark.
- Trademarks are an important tool in building a company's reputation, and registration will help protect that reputation as well as play a vital role in branding and marketing.
- You can license your trademark to another party thereby creating franchising opportunities.

How long does trademark protection last?

The terms of trademark protection can vary, but is usually 10 years. It can be renewed indefinitely on payment of additional fees. Trademark rights are private rights and protection is enforced through court orders.

What kind of trademarks can be registered?

A word or combination of words, letters and numerals can constitute a trademark. They can also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances or colour shades used as distinguishing features – the possibilities are endless.

For more information on how to apply for copyright, design, patent and trademark protection, visit the CIPC website at www.cipc.co.za or call the contact centre on 086 100 2472 (national) or +27 12 394 9973 (international).

DESIGN

What is design?

Essentially, design is about shape and features that appeal to the eye. Some designs are necessitated by function, while others are merely aesthetic. Design is about the shape, form, appearance, pattern, ornamentation and configuration of a product or article.

How does the registration of a design benefit you or your business?

- No one else will be allowed to use your design without your approval.
- You can license your design for a fee or royalty. and
- You can sell your design rights to others for a fee.

PATENT

What is a patent?

A patent is an exclusive right granted for an invention, which is a product or process that provides a new way of doing something or offers a new technical solution to a problem. The patent provides the owner with protection of the invention, meaning that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. To apply for a patent, technical information about the invention needs to be disclosed to the public.

Patents help inventors earn a living from their work. They are like titles that are transferable; they can be bought and sold to others besides the original owner. For example, if a patent owner cannot afford to manufacture and market the invention himself, he can license the right of the patent to a company.

Why are companies given patents?

The purpose of rewarding companies with patents is to encourage them to invent new products that benefit society.

What protection does a patent offer?



In principle, the patent owner has the exclusive right to prevent others from commercially exploiting the patented invention.

What are the requirements of patent protection?

South Africa has signed the international Agreement on Trade Related Aspects of Intellectual Property Rights or TRIPS, which commits us to having certain patent laws in the country. One of the requirements of this agreement is to provide 20 years of patent protection.

Is a patent valid in every country?

Patents are territorial rights. In general, the exclusive rights are only applicable in the country or region in which the patent has been filed and granted.

How long does a patent last?

The protection is granted for a limited period, generally 20 years from the filing date of the application.

How do patents affect prices?

When more than one company makes a product, the price of that product will be lower because of competition between the various manufacturers. However, when a product is under patent, there is no competition and the company that holds the patent can charge whatever it wants for the 20-year patent period. Medicines can also be patented and is the reason why many are so expensive.

How do patents affect access to medicine?

Patents keep the price of medicines high, meaning the majority of the population is not able to access many of those under patent. While patents are meant to serve the public by encouraging companies to invent new products, they can also harm the public by preventing those in need of medicines from accessing them. It is therefore important that the rights of the patent holder are balanced with the right of the public to health.

What is a generic medicine?

A generic is made by a company that does not hold the patent for that medicine. The medicine has exactly the same ingredients and works in exactly the same way as the patented medicine. Generic medicines, however, can only be sold once the 20-year patent period has expired or if the patent holder or government issues a special licence for the production and sale of the medicine during the patent period.

How do generic medicines affect prices?

Generic medicines are much cheaper than medicines under patent because they are made by a number of different companies, which compete to sell their products and so cut prices to attract buyers. The cost of a first-line antiretroviral regimen containing d4T, 3TC and NVP fell 100 times when generic medicines became available.

Intellectual Property

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