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MEMORANDUM ON COPYRIGHT

What is copyright?

In basic terms, Copyright is the right to prevent others from copying, or from using for commercial gain, what belongs to you.

Is there a statute governing copyright?

Yes, the Copyright Act 98 of 1978 as amended.

What is protected in terms of the Copyright Act, 1978?

Copyright can be described as the statutory right which vests in the creator of an original work, recognized in terms of the Copyright Act. The law of copyright currently protects the following categories of works *literary, artistic and musical works, sound recordings, cinematographic films, computer programs, radio and television broadcasts, satellite transmissions and published editions.*

Is it possible to Copyright an Idea?

No, there is “no copyright in ideas”. The law cannot protect something as ephemeral and sometimes fleeting as an idea. However, Copyright protects the expression of an idea (in tangible format).

Who is protected under the Copyright Act, 1978?

The categories of persons who are afforded copyright protection are defined in the Act and include foreign persons and incorporated bodies from member states of the Berne Convention.

Copyright vests, in the original creator or copyright owner of a work, the right to control the use of his or her work by third parties and essentially prohibit the unauthorised reproduction or publication thereof, or the making of an adaptation of the work.

How do I obtain copyright in my book?

Copyright, unlike patent, design and trade mark rights is not protected by way of registration at a central registry - except in the case of cinematograph films. There are no prescribed formalities for the acquisition of copyright, as it vests automatically in the original creator. Copyright arises as you express your ideas on the page. Thus, your work is automatically protected. It is important to note that if the work created by you is copied, it would be possible for you to institute legal action against the perpetrator, however, the onus of proof would rest on you to prove that you are the owner of copyright.

How long does copyright last?

Two separate but interlinked copyrights exist:

In respect of literary work, Copyright in the work usually belongs to the author (unless the author has assigned the Copyright to the publisher, in writing). In South Africa, the duration of copyright exists during the lifetime of the author, copyright exists for a further fifty years from the end of the year in which the author died.

In the published edition or typographical arrangement on the page. Copyright in the published edition belongs to the publisher. Copyright in the published edition lasts for 50 years from date of publication. Even when copyright in the literary work has expired, copyright in the published edition may still subsist.

Who may use the information when the Copyright expires?

When Copyright expires, the work falls into the public domain, and may be freely used and exploited by anyone.

What is the difference between 'copyright' and 'intellectual property'?

Intellectual property is a product of the intellect, or mind. Intellectual Property is a generic term used to refer collectively to intangible products such as patents, trademarks, copyright and designs are the four forms of intellectual property for example, you cannot copyright the name of a product but you can establish a trade mark in a product name. Whereas Copyright is the right to protect products of the intellect or mind from unauthorised usage.

What is copyright infringement?

Only the copyright owner may copy the work or authorise a third party to reproduce it in any manner or form; publish it; perform it in public; broadcast it; transmit it in a diffusion service; or adapt it. Any third party who performs any of these actions in respect of the

work - without permission from the copyright owner - has infringed copyright.

May I photocopy a section of a book for my own personal and private use?

In accordance with the Copyright Act, Copyright is not infringed by any fair dealing with a literary work for the purposes of the personal or private use of the work by the person making the copy. What is deemed to be 'fair' in any given situation will depend on the circumstances of that situation. The test for fair dealing is qualitative as well as quantitative.

May I copy a book or manuscript if the book is "out of print"?

When a book or manuscript is "Out of print" it does not necessarily mean the book or manuscript is "out of copyright".

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