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## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

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### DEPARTMENT OF TRADE AND INDUSTRY

NO. 646

27 JULY 2015

#### DEPARTMENT OF TRADE AND INDUSTRY COPYRIGHT AMENDMENT BILL 2015

##### INVITATION FOR THE PUBLIC TO COMMENT ON THE COPYRIGHT AMENDMENT BILL

I, Dr Rob Davies, Minister of Trade and Industry, having obtained Cabinet approval, hereby publish the Copyright Amendment Bill for broader public comments

Interested persons may submit written comments on the proposed Copyright Amendment Bill within 30 calendar days from the date of publication of this Notice to:

Director-General, Department of Trade and Industry

For Attention: Meshendra Padayachy

Private Bag X84

Pretoria

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Or Hand deliver to

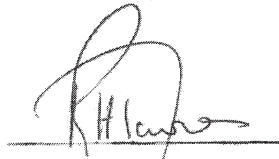
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Dr Rob Davies, MP

Minister of Trade and Industry

17 July 2015

**REPUBLIC OF SOUTH AFRICA**

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**COPYRIGHT AMENDMENT BILL**

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(Minister of Trade and Industry)

**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.

**BILL**

To amend the Copyright Act 98 of 1978, so as to amend certain definitions; to allow for the reproduction of copyright work; to provide for the protection of copyright in craft work; to provide for the accreditation and registration of Collecting Societies; to provide for the procedure for settlement of royalties disputes; to allow fair use of copyright work; to provide for access to copyright works for a person with disabilities; to provide for the protection of ownership of orphan works by the state; to provide for the establishment of Intellectual Property Tribunal; to provide for the appointment of members of the Intellectual Property Tribunal; to provide for the powers and functions of the Intellectual Property Tribunal; to provide for protection of performers' moral and economic rights; to provide for the protection of rights of producers of phonograms; to provide for prohibited conducts in respect technological protection measure; to provide for prohibited conduct in respect of copyright management information; provide for management of digital rights; to provide for the promotion of broadcasting of local content; to provide for certain new offences; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

**Amendment of section 1 of Act 98 of 1978 (herein after referred to as "the principal Act")**

1. Section 1 of the principal Act is hereby amended by -

(a) the insertion before the definition of "adaptation" of the following definition:

"**accessible format copy**" means a copy of a work in an alternative manner or form which gives a person with a disability access to the work, including to permit the person to have access as feasibly and comfortably as a person without disability. The accessible format copy is used exclusively by a person with a disability and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the person with a disability;";

(b) by the insertion before the definition of "author" of the following definition:

"**audio-visual fixation**" means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device;";

(c) the insertion before the definition of “country” of the following definition:

“‘**Commission**’ means a Commission established in terms of section 185 of the Companies Act, 2008 (Act 71 of 2008);”;

(d) the insertion after the definition of “country” of the following definition:

“‘**craft works**’ means works of pottery, glasswork, sewing, knitting, crochet, jewellery, tapestry, woodwork, lace work, embroidery, paper tolling, folk art and hand-made toys;”;

(e) the insertion after the definition of “copyright” of the following definition:

“‘**copyright management information**’ means information attached to, or embodied in a copy of a work that -

(a) identifies the work and its author or copyright owner; or

(b) identifies or indicates some or all of the terms and conditions for using the work or indicates that the use of the work is subject to terms and conditions;”;

(f) the insertion after the definition of “performance” of the following definition:

“‘**digital rights systems**’ means a collection of systems used to protect the rights of electronic media. These include digital music, photographs, videos, portable document format (PDF), presentations, documents and movies as well as other data that is stored and transferred digitally;”;

(g) the insertion before the definition of “performance” of the following definitions:

“‘**orphan works**’ means works in which copyright still subsists but the right holder, both the creator of the work or the successor in title cannot be located;”;

“‘**parallel importation of goods**’, also known as “gray market goods” refers to genuine branded goods that are imported into a market and sold there without the consent of the owner of the trademark;”;

(h) the insertion after the definition of “performance” of the following definition:

“‘**person with a disability**’ means a person who is blind, has a visual impairment, a perceptual or reading disability which cannot be improved to give visual function substantially, equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability or is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, regardless of any other disabilities;”;

(i) by the substitution for the definition of “phonogram” of the following definition:

**“‘phonogram’ means [any exclusively aural fixation of sounds of a performance or of other sounds;] the fixation of the sounds of a performance, or of other sounds, or of a representation of sounds other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;”**

(j) by the substitution for the definition of “reproduction” of the following definition:

**“‘reproduction’ means a copy made of a fixation or audio-visual fixation of a performance;”**

(k) the insertion after the definition of “sound recording” of the following definitions:

**“‘technological protection measure’ means any process, treatment, mechanism, technology, device, system or component that in the normal course of its operation is designed to prevent or restrict infringement of copyright work that is protected by a technological protection measure;**

**‘technological protection measure work’ means a copyright work that is protected by a technological protection measure;**

**‘technological protection measure circumvention device’ means a device primarily designed, produced or adapted for purposes of enabling or facilitating the circumvention of a technological protection measure;”**

(l) by the insertion after the definition of “reproduction” of the following definition:

**“‘Tribunal’ means the Intellectual Property Tribunal established in terms of section 29 of the Copyright Act, 1978 (Act 98 of 1978);”**

#### **Amendment of section 3 of Act 98 of 1978**

2. Section 3 of the principal Act is hereby amended by the addition in subsection (3) after paragraph (b) of the following paragraph:

**“(c) in the case of copyright that vests in the state due to the fact that the owner cannot be located, is unknown or is dead, the term of such copyright shall be perpetual.”**

#### **Amendment of section 5 of Act 98 of 1978**

3. Section 5 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

**“(2) Copyright [shall be conferred by this section] on every work which is eligible for copyright and which is made by or funded by or under the direction or control of the state or such international organizations [as may be prescribed.] shall be owned by the state or such international organization.”**

**Amendment of section 6 of Act 98 of 1978**

4. Section 6 of the principal Act is hereby amended by the addition after paragraph (g) of the following paragraph:

“(h) communicating to the public of their works, by wire or wireless means including, the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.”.

**Amendment of section 7 of Act 98 of 1978**

5. Section 7 of the principal Act is hereby amended by the addition after paragraph (f) of the following paragraph:

“(g) communicating to the public of their works, by wire or wireless means including, the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.”.

**Insertion of sections 7A, 7B, 7C and 7D in Act 98 of 1978**

6. The following sections are hereby inserted in the principal Act after section 7:

**“7A Resale royalty right**

- (1) A creator of artistic work shall, with respect to original works of art enjoy the inalienable resale royalty right on the commercial resale of his or her created work of art subsequent to the first transfer by the author or creator of such work of art.
- (2) Resale royalty shall be payable at the rate of 5% of the commercial resale price or as prescribed by the Minister.
- (3) A creator of artistic work, shall be entitled to receive resale royalty if -
- (a) at the time when a contract for resale of the artistic work is completed -
    - (i) the artist is a citizen or resident of South Africa; and
    - (ii) the term of validity of the resale right has not expired.
  - (b) in the case of a deceased artist, the deceased was at the time of death, a citizen or resident in South Africa;
  - (c) resale or any part of the transaction, take place within South Africa; and
  - (d) the contract for resale of the artistic work is completed on or after the commencement of this Act.

- (4) A resale right applies whether or not the artist -
  - (a) is or was the first owner of any copyright in the work; or
  - (b) has entered into an agreement with any person to assign, waive, or charge a resale right in contravention of this Act.

#### **7B. Proof of the author or creator**

- (1) Where a mark or name purporting to identify a person as a creator of an artistic work appears on such work, the person whose name appears is unless the contrary is proved, presumed to be the creator of such work.
- (2) If it is found that, artistic work is work of more than one (1) creator, the presumption in subsection (1) applies to each artist linked with such art work.

#### **7C. Duration of resale right**

- (1) A creator of artistic work's resale right expires at the end of the period of fifty (50) years from the end of the calendar year in which such artist died.
- (2) In the case of -
  - (a) an artistic work, the resale right of the work that is computer-generated expires, at the end of the period of fifty ( 50) years from the end of the calendar year in which the work was created;
  - (b) an artistic work created by an unknown artist, the resale right of the work expires at the end of the period of fifty (50) years from the end of the calendar year in which the work is first made available to the public including, by exhibition in public;
  - (c) an artistic work by joint artists, the resale right continues -
    - (i) if the identity of all the artists is known, until the end of the period of fifty (50) years from the end of the calendar year in which the last of the artists dies; or
    - (ii) if the identity of one (1) or more, but not all, of the artists is known, until the end of the period of fifty (50) years after the death of the last of the artists whose identity is known.
- (3) After the expiry of the period contemplated in subsection (1)(c), of a resale right in an artistic work created by an unknown artist, the resale right in that work does not revive if the identity of the artist becomes known.

#### **7D. Assignment and waiver**

- (1) An assignment and waiver of resale right is prohibited.
- (2) A term of an agreement which purport to assign or waive a resale right is unenforceable.

#### **7E. Transmission of resale right**

- (1) A resale right may be transmitted on the death of the holder in the following manner:
  - (a) the right passes to a person by testamentary disposition of the holder; or

- (b) if there is no direction, by testamentary disposition of the holder and by operation of law.
- (2) In the case of a bequest of an artistic work by an artist who did not transfer ownership of that work in his or her lifetime, the bequest must be read as including the resale right, unless the will of the artist or a codicil to that will provides otherwise.
- (3) If, a resale right that passes to a person as contemplated in subsection (1)(a) is able to be exercised by two (2) or more persons, it may be exercised by each of them independently of the other.
- (4) If resale royalties are recovered by the collecting agency after the death of a holder, those resale royalties must be treated as part of the deceased holder's estate."

#### **Amendment of section 8 of Act 98 of 1978**

- 7. Section 8 of the principal Act is hereby amended by the addition after paragraph (g) of the following paragraph:
  - "(h) communicating to the public of their works, by wire or wireless means including, the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them."

#### **Amendment of section 9 of Act 98 of 1978**

- 8. Section 9 of the principal Act is hereby amended –
  - (a) by the substitution for paragraph (e) of the following paragraph:
    - "(e) communicating the sound recording to the public[.] of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them."

#### **Amendment of section 9A of Act 98 of 1978**

- 9. Section 9A of the principal Act is hereby amended by -
  - (a) the insertion in subsection (1), after paragraph (a) of the following paragraphs:
    - "(aA) A person who intend to broadcast, cause transmission of or play a sound recording as contemplated in section 9 (c ),(d), or (e), must, at any time before performing acts contemplated in section 9(c),(d) or

- (e) give the copyright owner or Collecting Society a notice in the prescribed manner of his or her intention to perform such acts, indicating where practicable the date of the proposed performance, proposed terms and conditions for the payment of royalty and ask the copyright owner or Collecting Society to sign the proposal attached thereto.
- (aB) The copyright owner or Collecting Society must as soon as is reasonably practicable upon receipt of such notice respond to such proposal.
- (aC) If the copyright owner or Collecting Society rejects or proposes different terms and conditions to such proposal and the copyright owner or Collecting society proposal is rejected after negotiations, either party may in the prescribed manner refer the matter to the Tribunal.
- (aD) The Tribunal must adjudicate such matter as soon as reasonably practicable and where possible, before the performance which is the subject of such application, make any order it deems fit including, but not limited to an order that -
- (a) a provisional payment of royalty is made into a trust account of an attorney nominated by the copyright owner or Collecting Society pending the finalization of the terms and royalty payable: Provided that such amount shall be paid over to the copyright owner or Collecting society as it represents the difference, if any, between the amount determined as the appropriate royalty and the amount already paid and any balance, if any, must be repaid.”.
- (b) the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) The amount of any royalty contemplated in paragraph (a) shall be determined by an agreement between the user of the sound recording, the performer and the owner of the copyright, or between their representative Collecting Societies: Provided that in the absence of such agreement, the amount of royalty shall be determined by the Tribunal;”.
- (c) the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(a) The owner of the copyright who receives payment of a royalty in terms of this section shall share such royalty with any performer whose performance is featured on the sound recording in question and who would have been entitled to receive a royalty in that regard as contemplated in section 5 of the Performers’ Protection Act, 1967 (Act No 11 of 1967): Provided that such royalty payable for such use of sound recording shall be divided equally between the copyright owner and performer.”.
- (d) the substitution in subsection (2) for paragraph (b) of the following paragraph:
- “(b) The performer’s share of the royalty shall be determined by an agreement between the performer and the owner of copyright, or between their representative Collecting Societies[] : Provided that in the absence of such agreement, the amount of royalty shall be determined by the Tribunal.”.

- (e) the deletion in subsection (2) of paragraph (c).
- (f) the insertion in subsection (1), after paragraph (a) of the following paragraphs:
- “(aA) An agreement contemplated in subsection (1) must make a provision for payment of royalty in the event that there is a repeat of the actions contemplated in subsection (1).
- (aB) A person who intend to broadcast, cause transmission of or play a sound recording as contemplated in section 9(c), (d) or (e), must, at any time before performing acts contemplated in section 9(c), (d) or (e) give the copyright owner or Collecting Society a notice in the prescribed manner of his or her intention to perform such acts, indicating where practicable the date of the proposed performance, proposed terms and conditions for the payment of royalty and ask the copyright owner or Collecting Society to sign the proposal attached thereto.
- (aC) The copyright owner or Collecting Society must as soon as is reasonably practicable, upon receipt of such notice respond to such proposal.
- (aD) If the copyright owner or Collecting Society rejects or proposes different terms and conditions to such proposal and the copyright owner or Collecting Society proposal is rejected after negotiations, either party may in the prescribed manner refer the matter to the Tribunal.
- (aE) The Tribunal must adjudicate such matter as soon as reasonably practicable and where possible, before the performance which is the subject of such application, make any order it deems fit including, but not limited to an order that -
- (i) a provisional payment of royalty is made into a trust account of an attorney nominated by the copyright owner or Collecting Society pending the finalization of the terms and the royalty payable: Provided that such amount shall be paid over to the copyright owner or Collecting Society as it represents the difference, if any, between the amount determined as the appropriate royalty and the amount already paid and any balance, if any, must be repaid.”.
- (g) the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) The amount of any royalty contemplated in paragraph (a) shall be determined by an agreement between the user of the sound recording, the performer and the owner of the copyright, or between their representative Collecting Societies: Provided that in the absence of such agreement, the amount of royalty shall be determined by the Tribunal;”.

- (h) the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(a) The owner of the copyright who receives payment of a royalty in terms of this section shall share such royalty with any performer whose performance is featured on the sound recording in question and who would have been entitled to receive a royalty in that regard as contemplated in section 5 of the Performers’ Protection Act, 1967 (Act 11 of 1967): Provided that such royalty payable for such use of sound recording shall be divided equally between the copyright owner and performer;”.
- (i) the substitution in subsection (2) for paragraph (b) of the following paragraph:
- “(b) The performer’s share of the royalty shall be determined by an agreement between the performer and the owner of copyright, or between their representative Collecting Societies: Provided that in the absence of such agreement, the amount of royalty shall be determined by the Tribunal.”.
- (j) the deletion in subsection (2) of paragraph (c).
- (k) by the addition after subsection (3) of the following subsections:
- “(4) Notwithstanding the transfer of the copyright work in a literary, musical, artistic work in a cinematograph film, television, radio, photography, crafts work or computer program to the owner, the author or creator of the copyright work shall have the right to claim a royalty fee as and when the copyright work is used.”.
- “(5) In the absence of an agreement to the contrary, the person who sells craft work must ensure that -
- (a) payment of a royalty fee is made to the person who created the craft work; and
- (b) the person who purchased the craft work and re-sells the work makes payment of royalty to the creator of the craft work as contemplated in section 7A of the Act.”.

#### **Insertion of sections 9B, 9C, 9D, 9E, and 9F in Act 98 of 1978**

10. The following sections are hereby inserted in the principal after section 9A:

#### **“COLLECTING SOCIETY**

##### **9B. Registration**

- (1) There shall be one Collecting Society per copyright and per set of rights with regard to all music rights such as performance, needletime and mechanical, to be registered and regulated by the Commission.

- (2) In cases where there is no Collecting Society, contractual arrangements between copyright owners and creator shall be allowed as prescribed by the Minister.
- (3) Any person or an institution that intends to act as a representative Collecting Society by -
  - (a) administering on behalf of any copyright owners, on behalf of an organisation representing copyright owners, the right to receive payment of a royalty in terms of this Act; or
  - (b) administering on behalf of performers, on behalf of a performers' organisation, the right to receive payment of a royalty in terms of section 5(1)(b) of the Performers' Protection Act, 1967 (Act 11 of 1967), must be registered and accredited by the Commission in terms of this Act.
- (4) Any person or institution referred to in subsection (2) may, in the prescribed manner, lodge a written application with the Commission for registration as such.
- (5) The Commission may for purposes of issuing a registration certificate, consult with any person or institution and may grant such registration certificate with such terms and conditions determined by the Commission.
- (6) The Commission shall not register any applicant unless the Commission is satisfied that -
  - (a) the applicant, having scrutinized the application and supporting documents, may be able to ensure adequate, efficient and effective administration relating to collection of royalties; and
  - (b) the applicant may satisfactorily comply with any condition for accreditation, relevant provisions of the Companies Act, 2008 (Act 71 of 2008), Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003), as amended and any applicable and relevant legislation;
- (7) A registration certificate issued in terms of this Act shall be valid for a period not exceeding five (5) years and unless it is suspended or cancelled, may in the prescribed manner, be renewed on such terms and conditions determined by the Commission.

#### **9C. Administration of rights by Collecting Society**

- (1) Subject to such terms and conditions as may be prescribed -
  - (a) a Collecting Society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and
  - (b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the Collecting Society concerned.
- (2) A Collecting Society may enter into an agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said Collecting Society in the Republic: Provided that no such Collecting Society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of royalties collected.

- (3) Subject to such conditions as may be prescribed, a Collecting Society may -
  - (a) issue a licence in respect of any rights under this Act;
  - (b) collect royalties in pursuance of such licences;
  - (c) distribute such royalties among owners of rights after making deductions for its own expenses; and
  - (d) perform any other prescribed function in a manner consistent with the provisions of this Act.

**9D. Control of Collecting Society by owners of rights**

- (1) Collecting society shall be subject to the collective control of the owners of rights under this Act whose rights it administers and shall, in such manner as may be prescribed –
  - (a) obtain the approval of such owners of rights for its procedures of collection and distribution of royalties;
  - (b) obtain their approval for the utilisation of any amounts collected as royalties for any purpose other than distribution to the owner of rights; and
  - (c) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.
- (2) Royalties distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

**9E. Submission of returns and reports**

- (1) A Collecting Society must submit to the Commission such returns and reports at any time as may be prescribed.
- (2) The Commission may call for any report and also call for any records of any Collecting Society for purposes of satisfying the Commission that the affairs of such Collecting Society are conducted in a manner consistent with registration conditions or that royalties collected by the Collecting Society in respect of rights administered by such Collecting Society are being utilised or distributed in accordance with the provisions of this Act.

**9F. Suspension and cancellation of registration of Collecting Society**

- (1) The Commission may, if it is satisfied that a Collecting Society is being managed in a manner that contravenes registration conditions, in terms of this Act or managed in a manner detrimental to the interests of the owners of rights concerned, issue a compliance notice or apply to the Tribunal for an order to institute an inquiry into the affairs of such Collecting Society.
- (2) The Commission may, if it is of the opinion that it will be in the interest of the owners of rights concerned, apply to the Tribunal for an order suspending the registration of such society pending an inquiry for such period as may be specified in the order.
- (3) The Commission may, after such inquiry and if it is of the opinion that it will be in the interest of the owners of rights concerned, apply to the Tribunal for an order of cancellation of the registration.

- (4) During the period of suspension or cancellation of registration and following the order of the Tribunal, the Commission shall be responsible for the administration and discharge of functions of the Collecting Society: Provided that, the Tribunal may, on application by the Commission appoint any suitable person to assist the Commission in the administration and discharging of the functions of the Collecting Society.”.

**Insertion of section 10A in Act 98 of 1978**

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

- “10A(1)** The broadcasting industry is under obligation to develop the culture and support the growth of local content in specified areas for the Republic, by amongst others -
- (a) guiding the broadcast to develop and protect the national identity, culture, character and strengthen the social and economic fabric of the country;
  - (b) promoting local broadcasting, local programming and production of local television content, as defined in the Independent Broadcasting Authority Act, 1995 (Act 36 of 1995), as amended, by –
    - (i) broadcasting 80% of local television content in public channels, consistently with applicable local content quotas as may be developed by the broadcasting industry and relevant laws; and
    - (ii) broadcasting 60% of local television content in private channels, consistently with applicable local content quotas as may be developed by the broadcasting industry and relevant laws;
  - (c) promoting local broadcasting, local programming and production in radio and ensure that maxim allowance of time is given for broadcasting of recorded music (needle time) of local content, consistently with local content quotas as may be developed by the broadcasting industry to increase the play of such music as follows:
    - (i) 80% of play of local music in public and community radio stations; and
    - (ii) 60% of play of local music in private radio stations;
  - (d) promoting compliance with subsections (1)(a), (b) and (c) above by –
    - (i) obliging the institution regulating the broadcasting industry to use measures to ensure compliance with the obligation to promote local programming; and
    - (ii) monitor developments of copyright law and its implications in the broadcasting industry.
- (2)** Section 10A shall have a retrospective operation, as the date of publication and adoption of quotas for programming of local content as may be developed for the broadcasting industry.”.

**Insertion of section 11C in Act 98 of 1978**

12. The following section is hereby inserted in the principal Act after section 11B:

**“11C Nature of copyright in craft work**

- (1) Copyright in craft work vests the exclusive right to do or to authorize the doing of any of the following acts in relation to the whole craft work or a substantial part thereof:
- (a) create the original craft work automatically protected by copyright from the time they are created, as –
    - (i) work of the person who created the craft; or
    - (ii) work assigned to the creator by the manufacturer, publisher or employer, which copyright work is owned by the creator and the persons who assigned the work, respectively.
  - (b) design or draw a pattern for a craft item including, templates, drawings of shapes, diagrams, paintings and sculptures for crafts work;
  - (c) reproduce the work; or
  - (d) make arrangement or other transformation of the work.”.

**Amendment of section 12 of Act 98 of 1978**

13. Section 12 of the principal Act is hereby amended-

- (a) by the addition after subsection (13) of the following subsections:

- “(14) The copyright in a literary or musical work shall not be infringed by translation of such work by a person or a public body giving or receiving instruction provided that -
- (a) such translation is not done for commercial purposes;
  - (b) such translation may be used for private, educational, teaching, judicial proceedings, research and professional advice purposes only; or
  - (c) such work is translated from or into any language and communicated to the public for non-commercial public information purposes.
- (15) The copyright in a literary or musical work shall not be infringed by communication from an educational establishment to persons affiliated as persons receiving instruction at or from such educational establishment of reproductions and the translations permitted by this Act solely for private, educational and research purposes provided this is done through a secure network.”.

**Insertion of section 12A in Act 98 of 1978**

14. The following section is hereby inserted in the principal Act after section 12:

**“12A General exceptions from protection of copyright for fair use**

- (1) Notwithstanding any provision of this Act, fair use of work eligible for copyright includes the use by reproduction in copies, translation or by any other means which does not require the granting of licence as specified in the Schedule hereto.
- (2) Notwithstanding any provision of this Act, fair use of work for purposes such as criticism, comment, news reporting, judicial proceedings, professional advice, teaching which may include, making multiple copies for classroom use, scholarship or research is not an infringement of copyright.
- (3) Notwithstanding any provision of this Act, the use of digitised copyright material published in the internet and other electronic media shall be restricted for educational purposes, unless covered by an explicit notice for request for licence to use the digitised material.
- (4) Fair use of copyright work shall allow for some limited and reasonable use of copyrighted work for purposes of cartoon, parody or pastiche work in songs, films, photographs, video clips, literature, electronic research reports or visual art for non-commercial use, without having to request a permission specified in the Schedule hereto. The use includes -
  - (a) quoting the works of the copyright owner in a manner that is reasonable and fair;
  - (b) making copies of eBooks or compact discs purchased by the user; or
  - (c) transferring of purchased compact discs onto the user's MP3 format player.
- (5) In determining whether the use of copyright work in any particular case is a fair use, the following factors shall be considered:
  - (a) the purpose and character of the use including, whether such use is of a commercial nature or is for non-profit educational purposes;
  - (b) the nature of the copyrighted work;
  - (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
  - (d) whether the use of the copyrighted work is fair and proportionate, by considering further that –
    - (i) the use of copyrighted work is of few lines of a song, literature or few parts of a film or art work for cartoon, parody or pastiche;
    - (ii) the use of the whole copyrighted work for cartoon, parody or pastiche for commercial use shall require the issuance of licence; and

- (iii) the use of copyrighted work is compatible with fair practice in that the source and the name of the author are mentioned in the publication, broadcast, recording or the platform where the copyrighted work is displayed.
  - (e) the effect of the fair use upon the potential market for of the value of the copyrighted work.
- (6) The provision of subsections (1) and (2) shall apply to the use of copyrighted work not for commercial gain.
- (7) Notwithstanding any provision of this Act, parallel importation of trademarked goods is allowed in relation to –
  - (a) goods that have been exhausted to be resold in the area from which the goods originate; and
  - (b) the extent to which the owner of the trademarked goods can control the distribution of trademarked goods.
- (8) Encryption of computer-generated data is allowed to an extent that it is necessary to decrypt data in a protected state without resulting into incrimination.”.

#### **Insertion of section 13A in Act 98 of 1978**

15. The following section is hereby inserted in the principal Act after section 13:

##### **“13A Temporary reproduction**

- (1) Anyone is permitted to make temporary copies of a work which are transient or incidental and which are an integral and essential part of a technical process provided that the sole purpose of such copies is to enable a transmission of a work in a network between third parties by an intermediary or a lawful use of work which have no independent economic significance.

##### **13B Reproduction for educational activities**

- (1) For the purpose of educational activities copies may be made of works, recordings of works, broadcast in radio and television provided the copying is for fair use and has received permission and instructions not exceeding the extent justified by the purpose.
- (2) Educational establishments may incorporate the copies made under subsection (1) in printed and electronic course packs, study packs, resource lists and in any other material to be used in the course of instruction or in virtual learning environments, managed learning environments, virtual research environments and library environments hosted on a secure network and accessible only by the

persons giving and receiving instructions at or from the educational establishment making such copies.

- (3) Persons receiving instruction may incorporate portions of works in printed or electronic form in assignments and portfolios, theses and in dissertations for personal use and library deposit.
- (4) The source of the work reproduced and the name of the author shall be indicated as far as is practicable on all copies made under subsection (1) to (3).
- (5) The permission under subsection (1) shall not extend to reproductions for commercial purposes and shall include the reproduction of a whole textbooks where the textbook is either out of print, the owner of the right cannot be found, authorized copies of the same edition of the text book are not for sale in the country or cannot be obtained at a price reasonably related to that normally charged in the country for comparable works.

### **13C Inter-library document supply**

- (1) Libraries may supply to each other whether by post, fax or secure electronic transmission, provided that the electronic file is deleted immediately after printing a paper copy of an electronic copy of a work.
- (2) A paper copy may be supplied by the receiving library to a user of such library.”.

### **Amendment of section 15 of Act 98 of 1978**

- 16. Section 15 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:  
“(4) The provisions of section 12 (1), (2), (4), (5), (9), (10), (12) **[and]**, (13) , (14) and 15 shall mutatis mutandis, in so far as they can be applied, apply with reference to artistic works.”.

### **Amendment of section 16 of Act 98 of 1978**

- 17. Section 16 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:  
“(1) The provisions of section 12 (1) (b) and (c), (2), (3), (4), (12) **[and]**, 13),(14) and (15) shall mutatis mutandis apply with reference to cinematograph films.”.

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

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

**“General exceptions regarding protection of sound recordings**

17. The provisions of section 12 (1) (b) and (c), (2), (3), (4), (5), (12) **[and]** (13), (14) and (15) shall mutatis mutandis apply with reference to sound recordings.”.

**Substitution of section 18 of Act 98 of 1978**

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

**“General exceptions regarding protection of broadcasts**

18. The provisions of section 12 (1) to (5) inclusive, (12) **[and]** (13), (14) and (15) shall mutatis mutandis apply with reference to broadcasts.”.

**Substitution of section 19A of Act 98 of 1978**

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

**“General exceptions regarding protection of published editions**

19A. The provisions of section 12 (1), (2), (4), (5), (8), (12) **[and]** (13), (14) and (15) shall mutatis mutandis apply with reference to published editions.”.

**Amendment of section 19B of Act 98 of 1978**

21. Section 19B of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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), (14) and (15) shall mutatis mutandis apply, in so far as they can be applied, with reference to computer programs.”.

**Insertion of sections 19C, 19D and 19E in Act 98 of 1978**

22. The following sections are hereby inserted in the principal Act after section 19B:

**“19C General exceptions regarding protection of copyright work for archives, libraries, museums and galleries**

- (1) Archives, public libraries, other libraries, museums and galleries that are publicly funded in whole or in part may -

- (a) use and distribute copies of works as part of their activities in accordance with subsections (2) – (7) provided this is not done for commercial purposes;
  - (b) make copies of works in their collection for the purpose of back-up and preservation;
  - (c) may make or procure a copy of the work from another institution if a copy of such work is missing or incomplete: Provided the work cannot be reasonably acquired through general trade or from the publisher; and
  - (d) make copies of works that should be available in their collections in their chosen format, if they cannot reasonably be acquired in such format through general trade or from the publisher.
- (2) Archives, public libraries, other libraries, museums and galleries that are publicly funded in whole or in part must -
- (a) request permission to shift the format of the copyright work, if the copyright work may not, in its original form be migrated, used or preserved due to outmoded technologies.
- (3) The provision in subsection (2)(a) shall operate retrospectively and apply to pending applications.
- (4) The provision in subsection (2)(a) does not allow for the archives, public libraries, other libraries, museums and galleries that are publicly funded to shift the format of the copyright work and give them to other people.
- (5) Such institutions may make copies of works where the permission of the author or other owner of copyright cannot after reasonable endeavour be obtained or where the work is not available by general trade or from the publisher.
- (6) Copies of copyright work that are made in whatever format or acquired pursuant to the Act, may be used by users for personal use or study on the premises of the establishment with or without the means of technical equipment and can be lent to users. The same applies in special cases to copies made in accordance with subsection (1)(b).
- (7) This Act does not prevent the making of copies in accordance with the provisions of this Act.

**19D General exceptions regarding protection of copyright work for a person with disability**

- (1) It shall be permitted without the authorisation of the author or other owner of copyright to make an accessible format of a work for the benefit of a person with a disability, to supply that accessible format or copies of that accessible format to persons with a disability by any means including, by non-commercial lending or by electronic communication by wire or wireless means and undertake any

intermediate steps to achieve these objectives, provided that the following conditions are met:

- (a) the person or organisation wishing to undertake any activity under this provision has lawful access to that work or a copy of that work;
  - (b) the work is converted to an accessible format which may include, any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to a person with a disability; and
  - (c) the activity is undertaken on a non-profit basis.
- (2) A person with a disability to whom the work is communicated by wire or wireless means as a result of activity under subsection (1) shall be permitted without the authorisation of the owner of copyright to reproduce the work for personal use. This provision is without prejudice to any other limitations or exceptions that such person is able to enjoy.
- (3) It shall be permitted without the authorisation of the author or other owner of copyright to export to or import from another country, copies of an accessible format of a work referred to in subsection (1), to or by a person with a disability or an organisation that serves persons with a disability, as long as such activity is undertaken on a non-profit basis by that person or organization.
- (4) For the purposes of this section, accessible format means in such a format as may be required to address the needs created by the specific disability of a person with a disability in order to access and use a work to substantially the same degree as a person without a disability.
- (5) For the purposes of this section, a person with a disability means a person that requires an accessible format in order to access and use a work to substantially the same degree as a person without a disability.
- (6) This exception is subject to the obligations of indicating the source and the name of the author on the copy as far as practicable.

#### **19E General exceptions regarding protection of copyrighted craft work**

- (1) Copyright does not prevent the use or re-use of –
- (a) physical items which contain copyright images and do not involve the exclusive rights which the copyright seeks to protect;
  - (b) the edges of a material which has printed designs and does not involve any of the copyright owner's exclusive rights, unless the shape of the outline of the craft work reproduces a distinctive part of the copyright work; or
  - (c) pre-printed physical material, such as, craft work in postcards or cloth items.

- (2) Photocopying artistic craft work for other use not stipulated in the provisions of this Act, requires permission from the relevant copyright owner if the artistic work is covered in copyright."

**Amendment of section 20 of Act 98 of 1978**

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

(a) by the addition after subsection (2) of the following subsections:

- “(3) Notwithstanding the transfer of the copyright work in a television, film, radio, photography or crafts work to the owner, the creator of the copyright work has the moral right to –  
(a) be attributed as the creator;  
(b) not to be falsely attributed; and  
(c) not to have their work treated in a derogatory manner.
- (4) Notwithstanding the transfer of the copyright work in a television, film, radio, photography or crafts work to the owner, the creator of the copyright work or the performer has, exclusive of contractual arrangements, the moral right to receive royalty payments –  
(a) when repeats of the film, television, radio, photography or art work is used as prescribed by the Minister.”.

**Insertion of sections 20A, 20B, 20C, 20D, 20E and 20F in Act 98 of 1978**

24. The following sections are hereby inserted in the principal Act after section 20:

**“20A. Protection of performers’ moral and economic rights**

- (1) For purposes of this Act “communication to the public of a performance”, means the transmission to the public by any medium, otherwise than by broadcasting of an unfixed performance or of a performance fixed in an audio-visual fixation including, making a performance fixed in an audio-visual fixation, audible or visible or audible and visible to the public.
- (2) A performer shall, even after the transfer of those rights, as regards his or her live performances or performances fixed in audio-visual fixations, have the right -  
(i) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and  
(ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audio-visual fixations.
- (3) The rights granted to a performer in accordance with subsection (2) shall, after a performers death, at least until the expiry of other rights granted in terms of this section and exercisable by any authorized person, be maintained, at least until the expiry of a period of fifty (50) years computed from the end of the year in which the performance was fixed.
- (4) A performer shall enjoy the exclusive right of authorising his or her performances in relation to -

- (a) the broadcasting and communication to the public of his or her unfixed performances except where the performance is already a broadcast performance;
- (b) the fixation of his or her unfixed performances;
- (c) the direct or indirect reproduction of his or her performances fixed in audio-visual fixations, in any manner or form;
- (d) the making available to the public of the original and copies of his or her performances fixed in audio-visual fixations through sale or other transfer of ownership;
- (e) the commercial rental to the public of the original and copies of his or her performances fixed in audio-visual fixations, even after distribution of such copies by or pursuant to authorization by the performer;
- (f) the making available to the public of his or her performances fixed in audio-visual fixations by wire or wireless, in such a way that members of the public may access them from a place and at a time individually chosen by them;  
and
- (g) the broadcasting and communication to the public of their performances fixed in audio-visual fixations.

#### **20B. Transfer of rights**

Where a performer has consented to fixation of his or her performance in an audio-visual fixation, the exclusive rights of authorization granted to a performer in terms of section 3, subsections (4) paragraphs (c), (d), (e), (f) and (g) which shall be owned or exercised by or transferred to the producer of such audio-visual fixation, subject to a prescribed written contractual agreement which shall give the performer the right to receive royalties for any use of the performance.

#### **20C. Protection of rights of producers of phonograms**

- (1) For purposes of this Act “communication to the public of a phonogram” means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance, the sounds or the representations of sounds fixed in a phonogram.
- (2) A producer of a phonogram shall enjoy the exclusive right of authorizing -
  - (a) the direct or indirect reproduction of his or her phonograms, in any manner or form;
  - (b) the making available to the public of the original and copies of his or her phonogram through sale or other transfer of ownership;
  - (c) the commercial rental to the public of the original and copies of his or her phonogram, even after distribution of them by or pursuant to, authorization by the producer; or
  - (d) the making available to the public of his or her phonogram, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.
- (3) A performer and producer of phonogram shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonogram published for commercial purposes for broadcasting or for any communication to the public.

- (4) Subject to the provisions of this Act, no person shall without the consent of the performer -
- (a) make available to the public of the original and copies of performance fixed in audio-visual fixation through sale or otherwise of such performer;
  - (b) commercially rent out to the public of the original and copies of performance fixed in audio-visual fixation of such a performer; or
  - (c) make available to the public of performance fixed in audio-visual fixation by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.
- (5) A person who intend to-
- (a) broadcast or communicate an unfixed performance or performance fixed in audio-visual fixation of a performer to the public must -
    - (i) make a fixation of the unfixed performance or performance fixed in audio-visual fixation of a performer;
    - (ii) make a reproduction of a fixation of a performance or performance fixed in audio-visual fixation of a performer;
    - (iii) make available to the public of the original and copies of performance fixed in audio-visual fixation through sale or otherwise of a performer;
    - (iv) commercially rent out to the public of the original and copies of performance fixed in audio-visual fixation of such a performer;
    - (v) make available to the public of performance fixed in audio-visual fixation of a performer by wire or wireless, in such a way that members of the public may access them from a place and at a time individually chosen by them; and
    - (vi) give the copyright owner, performer or Collecting Society, a notice in the prescribed manner of his or her intention to perform such acts, indicating where practical, the date of the proposed performance, proposed terms and conditions for the payment of royalty and ask the copyright owner or Collecting Society to sign the proposal attached thereto.
- (6) The copyright owner, performer or Collecting Society must as soon as reasonably possible, upon receipt of such notice, respond to such proposal.
- (7) If the copyright owner, performer or Collecting Society rejects such proposal or proposes different terms and conditions and the parties could not agree on either proposals, either party may in the prescribed manner refer the matter to the Tribunal.
- (8) The Tribunal must adjudicate such matter as soon as it is reasonable, practicable and where possible, before the performance which is the subject of the application take place and may make any order it deems fit including, but not limited to, an order that -
- (a) a provisional payment of royalty be made into a trust account of an attorney nominated by the copyright owner, performer or Collecting Society pending the finalization of the terms and royalty payable: Provided that such amount shall be paid over to the copyright owner, performer or Collecting Society, as it represents the difference if any, between the amount determined as the

appropriate royalty and the amount already paid and balance if any, must be repaid.

#### **20D. Prohibited conduct in respect technological protection measure**

- (1) The prohibited conduct in respect of the technological protection measure, the use of a technological protection measure circumvention device and the exceptions related to technological protection measure, contemplated in sections 280 and 28P of the Copyright Act, 1978 (Act 98 of 1978), shall *mutatis mutandis* apply in respect of performances fixed or fixed in audio-visual fixations.
- (2) Contravention of the technological protection measure provisions contemplated in subsection (1) shall be an offence and a person convicted thereof shall be liable in terms of the provisions of this Act.

#### **20E. Prohibited conduct in respect of copyright management information**

The prohibited conduct in respect of the removal or modification of copyright management information attached to or embodied in a copy of work, consonant with the exceptions relating to such removal or modification contemplated in sections 28Q and 28R of the Copyright Act, 1978 (Act 98 of 1978), shall *mutatis mutandis* apply in respect of performances that are fixed or fixed in audio-visual fixations.

#### **20F. Digital rights management**

- (1) The library or archive must communicate the conditions for using a digital copy with authenticated users or persons with legitimate right to use the digital material, including –
  - (a) advising the authenticated person that the digital copy is lawfully obtained;
  - (b) ensuring that each user is informed in writing about the limitations and extent of fair use of the digital material in terms of this Act;
  - (c) ensuring that the digital copy is communicated to the user in a form that cannot be altered or modified;
  - (d) verifying that the number of digital copies used are not more than the number of the users;
  - (e) giving a written notice that sets out the terms of the use of the digital copy to the authenticated user; and
  - (f) as soon as is reasonably practicable, destroying any additional copy made in the process of making the digital copy.”.

#### **Amendment of section 21 of Act 98 of 1978**

25. Section 21 of the principal Act is hereby amended by the addition after subsection (2) of the following subsection:

“(3) Ownership of any copyright whose owner cannot be located, is unknown, or is deceased shall vest in the state: Provided that if the owner of such copyright is

located at anytime, ownership of such copyright shall be conferred back to such owner."

**Amendment of section 22 of Act 98 of 1978**

**26.** Section 22 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 section, copyright shall be transmissible as movable property by assignment, testamentary disposition or operation of law [.] Provided that, copyright owned by, vesting on, or under the custody of the state may not be assigned."
- (b) by the substitution for subsection (3) of the following subsection:  
“(3) No assignment of copyright and no exclusive licence to do an act which is subject to copyright shall have effect unless it is in writing signed by or on behalf of the assignor, the licensor or, in the case of an exclusive sublicense, the exclusive sublicensor, as stipulated in the Schedule hereto or as the case may be [.] Provided that such assignment of copyright shall be valid for a period of 25 years from the date of agreement of such assignment."

**Insertion of section 22A in Act 98 of 1978**

**27.** The following section is hereby inserted in the principal Act after section 22:

**"22A Assignment and licences in respect of orphan works**

- (1) A person who wishes to obtain a licence to do an act which is subject to copyright in respect of orphan works, must make an application to the Commission.
- (2) Before making an application in the prescribed manner, the applicant shall publish his or her intention to make such application in the national *gazette* and two (2) daily newspapers having national circulation within the Republic, in english and any other official language.
- (3) Every such application shall be made in such form as may be prescribed and shall be accompanied by copies of the published advertisement issued in terms of subsection (2) and such fee as may be prescribed.
- (4) Where an application is made to the Commission in terms of this section, the Commission may, after holding any inquiry as may be prescribed, grant to the applicant a licence to do such act which is subject to copyright, subject to the payment of a royalty and subject to such other terms and conditions as the Commission may determine.
- (5) The Commission, upon receipt of such application and having been satisfied that the applicant has undertaken reasonable steps prescribed in this section may, issue a licence subject to terms and conditions it may deem appropriate.
- (6) Before issuing a licence, the Commission must be satisfied that an applicant has undertaken the following steps in locating the copyright owner:

- (a) conducted a search of the records of the database of the register of copyright in the Commission that are available to the public through either the internet or any other means relevant to identifying and locating registered copyright owners;
  - (b) conducted a search of reasonably available sources of copyright authorship and ownership information and where appropriate, licensor information;
  - (c) conducted a search using appropriate technology tools, printed publications and where reasonable, internal or external expert assistance are enlisted;
  - (d) conducted a search using any other database including, databases that are available to the public through the internet or any other means; and
  - (e) has undertaken actions that are reasonable and appropriate in terms of the facts relevant to the search including, actions based on facts known at the start of the search and facts uncovered during the search including, actions as directed by the Commission and review any records not available to the public through the Internet that are known to be useful in identifying and locating the copyright owner.
- (7) Before making an application, the applicant shall, in the prescribed manner publish his or her intention to make such application in the national *gazette* and two (2) daily newspapers having national circulation within the Republic, in english and any other official language.
- (8) Every such application shall be made in such form as may be prescribed and shall be accompanied by copies of the published advertisement issued in terms of sub-section (2) and such fee as may be prescribed.
- (9) Where an application is made to the Commission in terms of this section, it may, after holding any such inquiry as may be prescribed, grant to the applicant a licence to do such act which is subject to copyright subject to the payment of such royalty and subject to such other terms and conditions as the Commission may determine.
- (10) Where a licence is granted in terms of this section, the Commission may, by order, direct the applicant to deposit the amount of the royalty determined in a particular account so as to enable the owner of the copyright or as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.
- (11) A licence issued in terms of this section is non-exclusive and is subject to such terms and conditions as the Commission may determine.
- (12) The owner of a copyright may, not later than five (5) years after the expiration of a licence issued in terms of this section, collect the royalties fixed in the licence or in default of their payment by initiating a legal suit to recover such royalties.
- (13) Any person who can adduce evidence that he or she is the owner of orphan works, he or she may have the copyrighted work returned to him or her with a claim in law to recover any fees that accrued to the copyright work.”.

#### **Amendment of section 23 of Act 98 of 1978**

28. Section 23 of the principal Act is amended by –

- (a) the addition, after subsection (3), of the following subsections:

“(4) Any person who –

- (a) tampers with information managing copyright, as contemplated in subsection 20A(16) of the Act, shall be guilty of an offence;
  - (b) omits to pay the author or creator of the copyright work a royalty fee as and when the copyright work is used as contemplated in subsection 9(4) of the Act, is guilty of an offence;
  - (c) omits to pay the creator of craft work a royalty fee as and when the craft work is sold at a higher price or is re-sold to a second and third seller, as contemplated in section 9(5) of the Act, is guilty of an offence;
  - (d) unreasonably refuses to grant permission for the use of copyright work for educational, judicial proceedings and the reproduction in copies of the copyrighted work, translation of copyrighted work in a usable language or format shifting, is guilty of an offence;
  - (e) contravenes the technological protection measure provisions contemplated in this Act shall be guilty of an offence and a person convicted thereof is liable in terms of the provisions of this Act;
  - (f) contravenes the provisions in relation to orphan works as contemplated in this Act, is guilty of an offence;
  - (g) collects fees outside the membership of Collecting Society is committing an offence;
  - (h) engages in a conduct that is prohibited in respect of technological protection measures stipulated in this Act, is guilty of an offence actionable in terms of the Act;
  - (i) contravenes the provision in relation to prohibition of conduct in respect of copyright management information, commits a copyright infringement that is actionable in terms of the Act; or.
  - (j) contravenes the provisions relating to the royalty rights of the creator in the case of resale of copyrighted work shall be guilty of an offence.
- (5) A broadcasting institution that contravenes the principles of this Act, for failure to promote local broadcasting and local programming in television and radio, shall be guilty of offence.
- (6) Any person who is found guilty as contemplated in section 23(4) above, shall be liable on conviction to imprisonment for a period not exceeding

ten (10) years or to a fine not exceeding fifty thousand (R50 000) or to both imprisonment and a fine. Deregistration of institutions found guilty as contemplated in the provisions of this Act, shall be a measure of last resort.”.

#### **Amendment of section 27 of Act 98 of 1978**

29. Section 27 of the principal Act is hereby amended by the insertion after subsection (5) of the following subsection:

- “(5A) (1) Any person who at the time when the copyright subsists in a work or technological protection measure work -
- (a) make, import, sell, distribute, let for hire, offer or expose for sale or hire or advertise for sale or hire, a technological protection measure and circumvention device if –
    - (i) such a person knows or has reason to believe that it will or is likely to be used to infringe copyright in a technological protection measure work;
    - (ii) such person intends to provide a service to another person to enable or assist such person to circumvent an effective technological protection measure; or
    - (ii) such person knows or has reason to believe that the service will or is likely to be used by another person to infringe copyright in a technological protection measure work.
  - (b) publish information enabling or assisting another person to circumvent an effective technological protection measure if such a person knows or has reason to believe that, such information will or is likely to be used to infringe copyright in a technological protection measure work; or
  - (c) knowingly or having reasonable grounds to know, circumvent an effective technological protection measure applied by the owner of copyright to such work shall be guilty of an offence and shall be liable upon conviction to a fine or imprisonment or to both fine and imprisonment.”.

#### **Insertion of section 27A in Act 98 of 1978**

30. The following section is hereby inserted in the principal Act after section 27:

##### **“27A Offences by companies**

- (1) Where any offence under this Act has been committed by a juristic person, every person who at the time the offence was committed was a director, in charge of or was responsible for the conduct of the business of such juristic person shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a juristic person and it is proved that the offence was committed with the consent of, collusion with or is attributable to any negligence

on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer, shall also be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

- (3) Upon conviction, such juristic person or any person convicted in terms of this section shall be liable to a fine or imprisonment or to both fine and imprisonment as contemplated in section 27(6)."

**Insertion of sections 28O, 28P, 28Q, 28R and 28S in Act 98 of 1978**

31. The following sections are hereby inserted in the principal Act after section 28:

**"28O Prohibited conduct in respect technological protection measure**

- (1) No person may make, import, sell, distribute, let for hire, offer or expose for sale or hire, or advertise for sale or hire, a technological protection measure circumvention device if such a person knows or has reason to believe that it will or is likely to be used to infringe copyright in a technological protection measure work.
- (2) No person may provide a service to another person if -  
(a) such person intends the service to enable or assist another person to circumvent an effective technological protection measure; and  
(b) such person knows or has reason to believe that the service will, or is likely to be used by another person to infringe copyright in a technological protection measure work.
- (3) No person may publish information enabling or assisting another person to circumvent an effective technological protection measure if such a person knows or has reason to believe that, such information will or is likely to be used to infringe copyright in a technological protection measure work.
- (4) No person may, during the subsistence of the copyright in a work and without the licence of the owner of copyright in such work, knowingly or having reasonable grounds to know, circumvent an effective technological protection measure applied by the owner of the copyright to such work.
- (5) A technological protection measure shall be deemed to be effective where the use of the work is controlled by the owner, exclusive licensee or person assigned copyright in such work through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or a copy control mechanism which achieves the protection objective.
- (6) The provisions of this section must be read together with the provisions of sections 86, 87 and 88 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002).

**28P. Exceptions in respect of technological protection measure**

- (1) Notwithstanding the provisions of section 28A, nothing in this Act shall prevent any person from using a technological protection measure circumvention device to perform -
  - (a) a permitted act or an act that falls within the general public interest exceptions in sections, 12, 13, 14, 15, 16, 17, 18, 19, 19A, 19B, 19C, 19D of this Act;
  - (b) any lawfully authorized investigative, protective or intelligence activity as an agent, employee or officer of an organ of the state; or
  - (c) any permitted act as prescribed from time to time by the Minister.
- (2) A person or user of a technological protection measure work who wishes to circumvent a technological protection measure so as to perform a permitted act or exempted act as contemplated in subsection (1) but cannot practically do so because of such a technological protection measure may –
  - (a) apply to the copyright owner for assistance to enable such person or user to circumvent such technological protection measure so as to perform a permitted act; or
  - (b) if the copyright owner has refused such person's or user's request or has failed to respond to it within reasonable time, engage the services of any other person for assistance to enable such person or user to circumvent a technological protection measure so as to perform a permitted act: Provided that any such other person enabling circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including, his name, address and all relevant particulars necessary to identify him and the purpose for which he or she has been enabled.

**28Q. Enforcement functions of the Commission**

- (1) The Commission established in terms of section 185 of the Companies Act, 2008, (Act 71 of 2008) must enforce this Act by-
  - (a) performing all enforcement functions as empowered by this Act and the Companies Act, 2008;
  - (b) referring matters to and appearing before the Tribunal;
  - (c) dealing with any other matter referred to it by any person, Tribunal or any other regulatory authority.

**28R. Prohibited conduct in respect of copyright management information**

- (1) No person may remove or modify any copyright management information attached to or embodied in a copy of a work.
- (2) No person may in the course of business make, import, sell, let for hire, offer or expose for sale or hire, advertise for sale or hire a copy of a work if any copyright management information attached to or embodied in the copy, has been removed or modified without the authority of the copyright owner.

**28S. Exceptions in respect of copyright management information**

- (1) The prohibition in section 28Q does not apply if a person –
- (a) has the authority of the copyright owner to remove or modify the copyright management information;
  - (b) does not know and has no reason to believe that the removal or modification will induce, enable, facilitate or conceal an infringement of the copyright in the work; or
  - (c) does not know and has no reason to believe that any copyright management information attached to or embodied in the copyright has been removed or modified without the authority of the copyright owner.”.

**Amendment of Chapter 3 of Act 98 of 1978**

32. Chapter 3 of the principal Act is hereby amended –

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

**“[COPYRIGHT TRIBUNAL] REGULATORY AND ENFORCEMENT AGENCIES.”.**

**Substitution of section 29 of Act 98 of 1978**

33. The following section is hereby substituted for section 29 of the principal Act:

**“29. Regulatory and Enforcement Agencies**

- (1) There is hereby established a juristic person to be known as the Intellectual Property Tribunal, which -
- (a) has jurisdiction throughout the Republic;
  - (b) is independent and subject only to the Constitution and the law;
  - (c) must carry out the functions and exercise the powers assigned to it by or in terms of the provisions of this Act or any legislation and
  - (d) must perform its functions impartially and without fear or favour.
- (2) Each organ of the state must assist the Tribunal to maintain its independence, impartiality and to perform its functions effectively.
- (3) In carrying out its functions, the Tribunal may -
- (a) have regard to international developments in the intellectual property arena;
  - or
  - (b) consult any person, organisation or institution with regard to any matter within its jurisdiction.
- (4) The Tribunal consists of a chairperson and not less than ten (10) members appointed by the Minister on a full or part-time basis.”.

**Insertion of section 29A to 29S in Act 98 of 1978**

34. The following sections are hereby inserted in the principal Act after section 29:

**“29A. Functions of the Tribunal**

- (1) The Tribunal must carry out the functions and exercise the powers and functions assigned to it in terms this Act or any legislation.
- (2) The Tribunal may -
  - (a) adjudicate any application or referral made to it in terms of this Act, Companies Act, 2008 (Act 71 of 2008) or any legislation and make any appropriate order in respect applications or referrals;
  - (b) hear appeals or review any decision of the Commission or any accredited dispute resolution institution;
  - (c) adjudicate any application or referral made to it by any person, institution or regulatory authority where the dispute which is the subject of the application or referral relates to intellectual property rights;
  - (d) settle disputes relating to payment of royalties or terms of agreements entered into as required by this Act or agreement entered into to regulate a relationship or matter in relation to intellectual property rights;

**29B. Appointment of members of Tribunal**

- (1) The Minister must appoint persons -
  - (a) with suitable qualifications and experience in economics, law, commerce or public affairs; and
  - (b) with adequate legal training and experience to satisfy the requirements of section 29G(1)(b) of this Act as members of the Tribunal.
- (2) The Minister must designate a member of the Tribunal as a chairperson and another member as a deputy chairperson of the tribunal.
- (3) The deputy chairperson perform functions of chairperson whenever -
  - (a) the office of chairperson is vacant; or
  - (b) the chairperson is for any other reason temporarily unable to perform those functions.
- (4) The Minister, in consultation with the Minister of Finance, must determine remuneration, allowances, benefits and other special terms and conditions of employment of members of the Tribunal.

**29C. Qualifications for appointment**

- (1) To be eligible for appointment as a member of the Tribunal and to continue to hold that office, a person must, in addition to satisfying any other specific requirements set out in this Act -
  - (a) not be subject to any disqualification set out in subsection (2) of this Act; and
  - (b) have submitted to the Minister a written declaration stating that he or she is not disqualified in terms of subsection (2).
- (2) A person may not be appointed or continue to be a member of the Tribunal, if that person -
  - (a) is an office-bearer of any political party, movement or organisation;
  - (b) has or through a related person acquires a personal financial interest that may conflict or interfere with the proper performance of the duties of a member of the Tribunal;
  - (c) is disqualified in terms of section 69 of the Companies Act, 2008 (Act 71 of 2008) from serving as a director of a company;
  - (d) is subject to an order of court holding that person to be mentally unfit or disordered;
  - (e) has been found in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere to have acted fraudulently, dishonourably, in breach of a fiduciary duty or of any other offence for which such person has been sentenced to direct imprisonment without the option of a fine;
  - (f) has been removed from a position of trust; or
  - (g) has at any time found to be in contravention of this Act.

**29D. Term of office of members of the Tribunal**

- (1) Each member of the Tribunal including, the chairperson and deputy chairperson serves for a term of five (5) years which may be renewed only once for a further period of five (5) years.
- (2) The chairperson may, on one (1) month written notice addressed to the Minister -
  - (a) resign from the Tribunal; or
  - (b) resign as chairperson, but remain as a member of the Tribunal.
- (3) A member of the Tribunal other than the chairperson may resign by giving at least one (1) month written notice to the Minister.
- (4) In an event of the expiry of the term of office of a member of the Tribunal and the member has a matter pending for adjudication before the Tribunal, the member may continue to act as a member in respect of that matter only.

**29E. Removal or suspension of members of Tribunal**

- (1) The Minister may, at any time, remove or suspend a member of the Tribunal from office if such a member -
  - (a) becomes subject to any of the disqualifications referred to in section 29C(2);
  - (b) repeatedly fails to the satisfaction of the Minister and board to perform the duties of the Tribunal;
  - (c) due to a physical, mental illness or disability, becomes incapable of performing the functions of that office;
  - (d) contravenes any provision of this Act;
  - (e) is found guilty of a serious misconduct; or
  - (f) engages in any activity that may undermine the integrity of the Tribunal.

**29F. Conflict and disclosure of interest**

- (1) A member of the Tribunal may not represent any person before the Tribunal.
- (2) If, during a hearing in which a member of the Tribunal is participating, it appears to the member that the matter concerns a financial or other interest of the member as contemplated in section 29C(b), the member must -
  - (a) immediately and fully disclose the fact and nature of such interest to the chairperson, deputy chairperson and the presiding member at that hearing as the case may be; and
  - (b) withdraw from any further involvement in that hearing.
- (3) A member must not -
  - (a) make private use of or profit from any confidential information obtained as a result of performing his or her official duties as a member of the Tribunal;
  - (b) divulge any information referred to in paragraph (a) to any third party, except as required and as part of the official functions as a member of the Tribunal.

**29G. Proceedings of the Tribunal**

- (1) The chairperson is responsible for managing the case files of the Tribunal, and must, take into account the complexity of a matter, assign each matter referred to the Tribunal to -
  - (a) a member of the Tribunal; or
  - (b) a panel composed of any three (3) members of the Tribunal.
- (2) When assigning a matter to a Tribunal panel in terms of subsection (1) paragraph (b), the chairperson may -
  - (a) ensure that at least one (1) member of the Tribunal panel is a person with suitable legal qualifications and experience; and
  - (b) designate a member of the Tribunal panel to preside over the proceedings of the Tribunal.
- (3) If, a member of the panel is unable to complete the proceedings in a matter assigned to that panel due to resignation, illness, death, removal, suspension or withdrawal from a hearing in terms of this Act, the chairperson, may -
  - (a) direct that the hearing of that matter proceed before the remaining members of the panel, subject to the requirements of subsection (2)(a); or
  - (b) terminate the proceedings before that panel and constitute a new panel which may include any member of the original Tribunal panel, and direct the Tribunal panel to conduct a new hearing.
- (4) The decision of a Tribunal on a matter referred to it must be in writing and include reasons for that decision.
- (5) The Tribunal shall take a decision whether a matter pending before the Tribunal hearing as contemplated in subsection (1)(a) shall hold with the remaining members of the panel or a panel shall be constituted with a majority of the members of the Tribunal.
- (6) A decision, judgment or order of the Tribunal may be served, executed, and enforced as if it were an order of the High Court and is binding subject to review or appeal to a court of law.

**29H. Hearings before Tribunal**

- (1) The Tribunal must conduct its hearings in public -
  - (a) in an inquisitorial manner;
  - (b) as expeditiously as possible;
  - (c) as informally as possible; and
  - (d) in accordance with the principles of natural justice.
- (2) Despite the provision of subsection (1), a Tribunal member presiding at a hearing may exclude members of the public, specific persons or categories of persons from attending the preceding if -
  - (a) evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;
  - (b) the proper conduct of the hearing requires it; or
  - (c) for any other reason that would be justifiable during proceedings in a High Court.

**29I. Right to participate in hearing**

- (1) The following persons may participate in a hearing before the Tribunal, in person or through a representative and may put questions to witnesses and inspect any books, documents or items presented at the hearing:
- (a) the Commission;
  - (b) the applicant, complainant and respondent; and
  - (c) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Tribunal, such interest is adequately represented by persons participating at the hearing.

**29J. Powers of a member presiding at hearing**

- (1) A member of the Tribunal presiding at a hearing may -
- (a) direct or summon any person to appear at any specified time and place;
  - (b) question any person under oath or affirmation;
  - (c) summon or order any person to -
    - (i) produce any book, document or item necessary for purposes of the hearing; or
    - (ii) perform any other act in relation to this Act; and
  - (d) give direction prohibiting or restricting the publication of any evidence adduced during a Tribunal hearing.

**29K. Rules of procedure**

Subject to the rules of procedure of the Tribunal, a member of the Tribunal presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case and the requirements of the applicable provision of this Act.

**29L. Appeals and reviews**

- (1) A participant in a hearing before a single member of the Tribunal may appeal against a decision of that member to a full panel of the Tribunal.
- (2) Subject to the rules of the High Court, a participant in a hearing before a full panel of the Tribunal may -
- (a) apply to the High Court to review the decision of the Tribunal; or
  - (b) appeal to the High Court against the decision of the Tribunal.

**29M. Interim relief**

- (1) At any time, whether or not a hearing has commenced, any person may apply to the Tribunal for an interim order in respect of that matter before the Tribunal.
- (2) The Tribunal may only grant such an order if -
- (a) there is *prima facie* evidence that the allegations may be true; and
  - (b) an interim order is reasonably necessary to -
    - (i) prevent serious, irreparable damage to that person; or
    - (ii) prevent the purposes of this Act from being frustrated.

- (c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
  - (d) the balance of convenience favours the granting of the order.
- (3) An interim order in terms of this section must not extend beyond the earlier of -
  - (a) the conclusion of a hearing into the matter before the Tribunal; or
  - (b) the date that is six (6) months after the date of issue of the interim order.
- (4) If an interim order has been granted and a hearing into that matter has not been concluded within six (6) months after the date of that order, the Tribunal may, on good cause shown, extend the interim order for a further period not exceeding six (6) months.

#### **29N. Orders of the Tribunal**

- (1) In addition to Tribunal powers in terms of this Act and Companies Act, 2008, (Act 71 of 2008) the Tribunal may make any appropriate order in relation to a matter brought before it, including -
  - (a) declaring a particular conduct to constitute an infringement of this Act and as such prohibited;
  - (b) interdicting conduct which constitute an infringement of this Act;
  - (c) imposing an administrative fine in terms of section 175 of the Companies Act, 2008, (Act 71 of 2008) with or without the addition of any other order in terms of this Act;
  - (d) confirming a consent agreement in terms of section 174 of the Companies Act, 2008, (Act 71 of 2008), as an order of the Tribunal;
  - (e) condoning any non-compliance of its rules and procedures on good cause shown;
  - (f) confirming an order against an unregistered person to cease engaging in any activity that is required to be registered in terms of this Act;
  - (g) suspending or cancelling the registrant's registration or accreditation subject to any such terms and conditions the Tribunal deems fit; or
  - (h) any other appropriate order required to give effect to a right, as contemplated in this Act or any other relevant legislation.

#### **29O. Witnesses**

- (1) Every person giving evidence at a hearing of the Tribunal must answer any relevant question.
- (2) The law regarding a witness's privilege in a criminal case in a court of law applies.
- (3) The Tribunal may order a person to answer any question or to produce any article or document, even if it is self-incriminating to do so.

#### **29P. Costs**

- (1) Subject to subsection (2), each party participating in a hearing must bear its own costs.
- (2) If the Tribunal -

- (a) has not made a finding against a respondent, the member of the Tribunal presiding at a hearing may award costs to the respondent and against a complainant who referred the complaint; or
- (b) has made a finding against a respondent, a member of the Tribunal presiding at a hearing may award costs against the respondent and to a complainant who referred the complaint to the Tribunal.

**29Q. Appointment of staff of the Tribunal**

- (1) The Chairperson or any delegated official of the Tribunal may –
  - (a) appoint staff, enter into contract or hire independent contractors to assist the Tribunal in carrying out its functions;
  - (b) in consultation with the Minister and the Minister of finance, determine the remuneration, allowances, benefits and other terms; and
  - (c) conditions of members of staff of the Tribunal or those contracted to assist the Tribunal.

**29R. Finances**

- (1) Tribunal is financed from –
  - (a) money appropriated by Parliament;
  - (b) any fees or fines payable in terms of this Act or any relevant legislation;
  - (c) income derived from their respective investment and deposit of surplus money in terms of subsection (2); or
  - (d) other money accruing from any source.
- (2) The Tribunal may invest or deposit money that is not immediately required for contingencies or to meet current expenditures –
  - (a) on a call or short-term fixed deposit with any registered bank of financial institution in the Republic; or
  - (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act 46 of 1984).

**29S. Reviews and reports to Minister**

- (1) The Minister may, at any time, conduct an audit review of the performance and exercise of the functions by the Tribunal.
- (2) In addition to any other reporting requirement set out in this Act or any legislation, the Tribunal must report to the Minister annually on its performance and activities, as required by the Public Finance Management Act, 1999 (Act 29 of 1999).
- (3) As soon as practicable after receiving a report of a review contemplated in subsection (1), or after receiving a report contemplated in subsection (2), the Minister must transmit and table a copy of the report in Parliament.”.

**Repeal of sections 30, 31, 32, 33 and 36 of Act 98 of 1978**

35. Sections 30,31,32,33 and 36 of Act 98 of 1978 are hereby repealed.

**Amendment of section 39 of Act 98 of 1978**

36. Section 39 of the principal Act is hereby amended -

(a) by the deletion after paragraph (Cd) of the words “and”;

(b) by the insertion after paragraph (cE) of the following paragraphs:

- “(cF) prescribing rules regulating processes and proceedings of the Tribunal;
- “(cG) prescribing compulsory and standard contractual terms to be included in agreements to be entered in terms of this Act;
- “(cH) prescribing permitted acts for circumvention of technological protection measures as contemplated in section 28B, after due consideration of the following factors:
  - (i) the availability for use of works protected by copyright;
  - (ii) the availability for use of works for non-profit archival and educational purposes;
  - (iii) the impact of the prohibition on the circumvention of technological protection measures applied to works or protected by copyright on criticism, comment, news reporting, teaching, scholarship, or research;
  - (iv) the effect of the circumvention of technological protection measures on the market for or value of works protected by copyright; or
  - (v) such other factors as the Minister considers appropriate.
- “(cI) prescribing royalty rates or tariffs for various forms of use;
- “(cJ) prescribing the appropriate period for retention of unclaimed royalties;
- “(cK) prescribing code of conduct for Collecting Society and any matter relating to the reporting, operations, activities and functions of Collecting Society; and
- “(cL) prescribing the local music content for television and radio broadcasting.”.

(c) by the addition after paragraph (cK) of the following paragraph:

“(e) Before making any regulations in terms of this Act, the Minister must publish the proposed regulations for public comment for a period of not less than thirty (30) calendar days.”.

**Insertion of section 39A in Act 98 of 1978**

37. The following section is hereby inserted in the principal Act after section 39:

**“39A. Unenforceable contractual term**

- (1) To the extent that a term of a contract purports to prevent or restrict the doing of any act which by virtue of this Act would not infringe copyright or which purport to renounce a right or protection afforded by this Act, such term will be unenforceable.”.

**Short title and commencement**

- 38.** This Act is called the Copyright Amendment, 2015 and shall come into operation on a date fixed by the President by proclamation in the Gazette.

## Schedule

### A. Translation Licenses

#### 1. Application of the provisions in the Schedule

- (1) The provisions in this Schedule apply to copyright works which have been published in printed or analogous forms of reproduction.

#### 2. Application for license

- (1) Any person may, apply to the Intellectual Property Tribunal for a license to make a translation of the work into any of the languages including, Northern Sotho, Zulu, Sotho, Swazi, Tsonga, Tswana, Venda, Xhosa, Afrikaans or Ndebele, the translation in printed or analogous forms of reproduction (hereinafter referred to as "the license").
- (2) Any person may, apply to the Intellectual Property Tribunal for a license to translate copyrighted work, to make the work into a usable or in analogous forms of reproduction.
- (3) No license shall be granted until the expiration of the following applicable periods -
- (a) within a period of one (1) week from the date of first publication of the original copyrighted work, where the application is for a license for translation into specified languages;
- (b) three (3) months from the date of first publication of the original copyrighted work, where the application is for a license for translation into specified languages in general use or any other language in general use; and
- (c) one (1) year from the date of first publication of the of the original copyrighted work where the application is for a license for translation into any language that is not stipulated in this Act or languages that are not generally used in the Republic as covered by subsection (1) above.

#### 3. Grant license

- (1) Before granting a license, the Intellectual Property Tribunal shall determine that –
- (a) no translation of the work into the language in question of copyrighted work has been established in printed or analogous forms of reproduction by or with the authorization of the owner of the right of translation or any previous editions in that language are out of print;

- (b) the applicant for the license has established that he/she either has requested and has been denied authorisation from the owner of the right of translation after due diligence on his/her part, was unable to find such owner;
  - (c) at the same time as addressing the request referred to in (a) and (b) above with the owner, the applicant for the license has informed any organization designated for the purpose of his/her request in which the publisher of the work to be translated is believed to have his principal place of business;
  - (d) if the applicant could not find the owner of the copyrighted work requiring translation by registered mail or electronic mail (with proof of service), a copy of his/her application to the publisher whose name/s appears on the work and another such copy to any principal place of business referred to above;
  - (e) no license shall be granted unless the owner of the copyrighted work requiring translation is known or located and has been given an opportunity to be heard;
  - (f) No license shall be granted until expiration of -
    - (i) a further period of two (2) days, where the one (1) week period referred to in subsection (3)(a) applies;
    - (ii) a further period of two (2) weeks, where three (3) months referred to in subsection (3)(b) applies; or
    - (iii) a further period of three (3) months, where one (1) month referred to in subsection (3)(c) applies.
  - (g) Such further period shall be computed from the date on which the applicant complies with the requirements mentioned in subsections (a) – (f) or where the identity or the address of the owner of the copyright work requiring translation is unknown from the date on which the applicant also complies with the requirement mentioned in subsection (a) – (f) above; and
  - (h) If, during either of the said further periods, a translation into the language in question of the copyright work has been published in printed or analogous forms of reproduction by or with the authorization of the owner of the translation right, no license shall be granted.
- (2) For works composed mainly of illustrations, a license shall be granted only if the conditions stipulated in (a) – (f) are also fulfilled.
  - (3) No license shall be granted when the author has withdrawn all copies of the work from circulation.

#### **4. Scope and conditions of license**

- (1) Any license under this Schedule shall –
  - (a) be only for the purpose of teaching;
  - (b) training, scholarship or research;

- (c) allow publication in a printed or analogous form of reproduction consistently with the conditions stipulated above, provided that –
    - (i) the Intellectual Property Tribunal certifies that facilities do not exist for such printing or reproduction or that existing facilities are incapable for economic or practical reasons of ensuring such reproduction, the preparation may be made outside the country if –
      - (aa) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in the Republic and the contract between the licensee and the establishment doing the work of reproduction so requires;
      - (bb) the said contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and
      - (cc) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for a license granted under this Schedule.
  - (c) not extend to the export of copies made under the license, except as provided in subsection (i);
  - (d) be non-exclusive; and
  - (e) be transferable.
- (2) Copies of a translation published under a license, may be sent abroad by the Government or other public entity provided that –
  - (a) the translation is into a language other than the language used in the Republic that will be of use;
  - (b) the recipients of the copies are individuals who are South African nationals or are organizational groupings that are nationals in the Republic;
  - (c) the recipients will use the copies only for the purpose of teaching, scholarship or research;
  - (d) both the sending of the copies abroad and their subsequent distribution to the recipients are without any commercial purpose; and
  - (e) the government of the foreign country to which the copies are sent has agreed to the receipt or distribution, or both, of the copies into that country.
- (3) World Intellectual Property Organisation (WIPO) shall be notified by the Intellectual Property Tribunal of agreements pertaining to license, if any.
- (4) The license shall provide for just compensation in favor of the owner of the right of translation that is consistent with standards of royalties normally operating in the case of licenses freely negotiated between persons in the country and owners of translation rights in the country of the owner of the right of translation.
- (5) If the licensee is unable to transmit the compensation to the owner of the right of translation due to conversion of currency, he/she shall report the fact to the Intellectual Property Tribunal who shall make all efforts, by the use of international machinery to ensure such transmittal is in internally convertible currency or its equivalent.

- (6) As a condition of maintaining the validity of the license, the translation must be correct for such use and all published copies must include the following:
  - (a) the original title and name of the author of the work;
  - (b) a notice in the language of the translation stating that the copy is available for distribution only in the Republic;
  - (c) if the work which is translated was published with a copyright notice, a reprint of that notice must be included.
- (7) The license shall terminate if –
  - (a) a translation of the work is in the same language or the copyrighted work with substantially the same content as the original publication under the license; and
  - (b) a translation of the work is published in printed or analogous forms of reproduction in the country by or with the authorization of the owner, at a price reasonably related to the price normally charged in the country for comparable works. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

## **5. License for broadcasting organization**

- (1) A license under this Schedule may also be granted to a domestic broadcasting organization, provided that the following conditions are met –
  - (a) the translation is made from a copy made and acquired in accordance with the laws of the country;
  - (b) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialised technical or scientific research to experts in a particular profession;
  - (c) the translation is used exclusively for the purpose specified in (b) above, through broadcasts that are lawfully made and that are intended for recipients in the country, including broadcasts made through the medium of sound or visual recording that have been made lawfully and for the sole purpose of such broadcasts;
  - (d) sound or visual recordings of the translation may not be used by broadcasting organizations other than those having their headquarters in the country; and
  - (e) all uses made of the translation are without commercial purpose.
- (2) A license may also be granted to a domestic broadcasting organization under all of the conditions provided in subsection (1), to translate any text incorporated in an audiovisual fixation that was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

## **B. Reproduction Licenses**

### **1. Application of the provisions in the Schedule**

- (1) The provisions in this Schedule apply to works which have been published in printed or analogous forms of reproduction.

## **2. Application for license**

- (1) Any person may, apply to the Intellectual Property Tribunal for a license to reproduce and publish a particular edition of the work in printed or analogous forms of reproduction (hereinafter referred to as "the license").
- (2) No license shall be granted until the expiration of the following applicable periods, commencing from the date of first publication of the particular edition of the work -
- (a) three (3) years for works, such as, technology and of the natural and physical sciences including, mathematics;
  - (b) seven (7) years for works of fiction, poetry, drama and music, and for art books; and
  - (c) five (5) years for all other works.

## **3. Grant of license**

- (1) Before granting of license, the Intellectual Property Tribunal shall determine that –
- (a) no distribution, by or with no authorization of the owner of the right of reproduction of copies in printed or analogous forms of reproduction of that particular edition has taken place in the country, to the general public or in connection with systematic activities at a price reasonably related to that normally charged in the country or that, under the same conditions, such copies have not been on sale in the country for a continuous period of at least six (6) months;
  - (b) the applicant for the license has established that he/she either has requested, and has been denied, authorisation from the owner of the right of reproduction or that, after due diligence on his/her part, he/she was unable to find such owner;
  - (c) at the same time as addressing the request referred to in (b) above, to the owner, the applicant for the license has informed any national or international organization designed for the purpose of his/her application, in which the publisher of the work to be reproduced is believed to have his principal place of business; and
  - (c) If he could not find the owner of the right of reproduction, the applicant has sent, by registered mail or electronic mail (with proof), a copy of his application to the publisher whose name appears on the work and another such copy to any principal place of business referred to in above.
- (2) no license shall be granted unless the owner of the right of reproduction is known, located or has been given an opportunity to be heard.
- (3) where the three (3) year period referred to in section (2)(a) applies, no license shall be granted until the expiration of six (3) months computed from the date on which the applicant complies with the requirements mentioned in subsection (2)(a) and (b) or, where the identity or the address of the owner of the right of reproduction is unknown,

from the date on which the applicant also complies with the requirements mentioned in this Schedule.

- (4) where the seven (7) year or five (5) year periods referred to in sections (2)(b) and (c) apply and where the identity or the address of the owner of the right of reproduction is unknown, no license shall be granted until the expiration of six (6) computed from the date on which the copies referred to have been mailed.
- (5) if, during the period of six or three months referred to in subsection (3) or (4), a distribution or placing on sale has taken place, no license shall be granted.
- (6) no license shall be granted if the author has withdrawn from circulation all copies of the edition which is the subject of the application.
- (7) where the edition which is the subject of an application for license under this Schedule is a translation, the license shall only be granted if the translation is in a language required by or with the authorization of the owner of the right of translation.

#### **4. Scope and condition of the license**

- (1) Any license under this Schedule shall –
  - (a) only be for use in connection with systematic instructional activities;
  - (b) only allow publication in a printed or analogous form of reproduction at a price reasonably related to or lower than, that normally charged in the country for comparable work;
  - (c) only allow publication within the country and shall not extend to the export of copies made under the license;
  - (d) where the Intellectual Property Tribunal certifies that facilities do not exist in the country and the contract between the licensee and the establishment doing the work of reproduction so requires, the reproduction may be made outside the country if –
    - (i) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in the country and the contract between the licensee and the establishment doing the work of reproduction so requires;
    - (ii) the said contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done;
    - (iii) the licensee does not entrust the work of reproduction to an establishment created for the purpose of having copies reproduced of works for which a license has been granted under this Schedule;
    - (iv) be non-exclusive; and
    - (v) not be transferable.

- (2) The license shall provide for just compensation in favor of the owner of the right of reproduction that is consistent with standards of royalties normally operating in the case of licenses freely negotiated between persons in the country and owners of reproduction rights in the Republic of the owner of the right of reproduction.
- (3) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the owner of the right of reproduction, he/she shall report the fact to the Intellectual Property Tribunal who shall make all efforts, by the use of international machinery, to ensure such transmittal in internationally convertible currency or its equivalent.
- (4) As a condition of maintaining the validity of the license, the reproduction of that particular edition must be accurate and all published copies must include the following:
  - (a) the title and name of the author of the work;
  - (b) a notice in the language of the publication stating that the copy is available for distribution only in the Republic; and
  - (c) if the edition which is reproduced bears a copyright notice, a reprint of that notice.
- (5) The license shall terminate if copies of an edition of the work in printed or analogous forms of reproduction are distributed in the Republic, by or with the authorization of the owner of the right of reproduction and in connection with systematic instructional activities, at a price reasonably related to that normally charged in the Republic if such edition is in the same language and is substantially the same in content as the edition which was published under the license.
- (6) Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

#### **6. License for audiovisual fixations**

- (1) Under the conditions provided in this Schedule, a license may also be granted –
  - (a) to reproduce in audio-visual form, a lawfully made audio-visual fixation including, any protected works incorporated in it, provided that the said fixation was prepared and published for the sole purpose of being used in connection with systematic instructional activities; and
  - (b) to translate any text incorporated in the said fixation into the language or languages generally used in the Republic.

# IMPORTANT Information from Government Printing Works

Dear Valued Customers,

Government Printing Works has implemented rules for completing and submitting the electronic Adobe Forms when you, the customer, submits your notice request.

Please take note of these guidelines when completing your form.

## GPW Business Rules

1. No hand written notices will be accepted for processing, this includes Adobe forms which have been completed by hand.
2. Notices can only be submitted in Adobe electronic form format to the email submission address [submit.egazette@gpw.gov.za](mailto:submit.egazette@gpw.gov.za). This means that any notice submissions not on an Adobe electronic form that are submitted to this mailbox will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
3. Notices brought into GPW by "walk-in" customers on electronic media can only be submitted in Adobe electronic form format. This means that any notice submissions not on an Adobe electronic form that are submitted by the customer on electronic media will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
4. All customers who walk in to GPW that wish to submit a notice that is not on an electronic Adobe form will be routed to the Contact Centre where the customer will be taken through the completion of the form by a GPW representative. Where a customer walks into GPW with a stack of hard copy notices delivered by a messenger on behalf of a newspaper the messenger must be referred back to the sender as the submission does not adhere to the submission rules.
5. All notice submissions that do not comply with point 2 will be charged full price for the notice submission.
6. The current cut-off of all Gazette's remains unchanged for all channels. (Refer to the GPW website for submission deadlines – [www.gpwonline.co.za](http://www.gpwonline.co.za))
7. Incorrectly completed forms and notices submitted in the wrong format will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email [info.egazette@gpw.gov.za](mailto:info.egazette@gpw.gov.za))
8. All re-submissions by customers will be subject to the above cut-off times.
9. All submissions and re-submissions that miss the cut-off will be rejected to the customer to be submitted with a new publication date.
10. Information on forms will be taken as the primary source of the notice to be published. Any instructions that are on the email body or covering letter that contradicts the notice form content will be ignored.

You are therefore advised that effective from **Monday, 18 May 2015** should you not comply with our new rules of engagement, all notice requests will be rejected by our new system.

Furthermore, the fax number **012- 748 6030** will also be **discontinued** from this date and customers will only be able to submit notice requests through the email address [submit.egazette@gpw.gov.za](mailto:submit.egazette@gpw.gov.za).

