

Aspects of copyright

In this article I continue the discussion on copyright law by examining the questions of the duration, nature and infringement of copyright.¹

The period afforded to the owner of copyright in a work for controlling the use of his work and deriving remuneration from it — in other words the duration of the copyright — is a very generous one. For literary, musical and artistic works other than photographs, the copyright endures for a period of fifty years from the end of the year in which the author died. For cinematograph films and photographs the copyright expires fifty years after the end of the year in which the work was first lawfully made available to the public, or if the work is not lawfully made available to the public during the fifty-year period, fifty years after the end of the year in which the work was made. Sound recordings enjoy copyright for a period of fifty years from the end of the year in which they were first published, and broadcasts and programme-carrying signals are subject to copyright for fifty years after the end of the year in which they were emitted or in which the signals were emitted to a satellite.

In essence, copyright is the right to do or authorize others to do or prevent others from doing the acts that are designated in respect of each of the different types or categories of works that can be the subject of copyright, as the monopoly of the copyright owner. In respect of each of the types or categories of works the Act details a list of acts or dealings with the work that are the monopoly of the copyright owner. The lists of restricted acts differ from one category of work to another, but in essence they amount to copying the work in one form or another, exploiting it commercially or both.

It is not appropriate for the present purposes to go into detail in regard to the restricted acts in respect of the different categories of works, but I should like to comment on some of these acts:

One of the restricted acts in respect of literary, musical and artistic works and cinematograph films is the making of an adaptation of the work. An adaptation of a literary work is

defined as including: in regard to a non-dramatic work, a version of the work in which it is converted into a dramatic work, and in regard to a dramatic work, a version of the work in which it is converted into a non-dramatic work; a translation of the work; a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical.

An adaption of a musical work includes any arrangement or transcription of the work if the arrangement or transcription has an original creative character.

In regard to an artistic work, an adaptation of the work includes a transformation of the work in such a manner that the original or substantial features of it remain recognizable.

For a cinematograph film there is no assistance from the Act as to what an adaptation is, and it is not easy to visualize what the legislature had in mind.

The restricted acts in respect of an artistic work include reproducing a two-dimensional work in a three-dimensional form and, conversely, reproducing a three-dimensional work in a two-dimensional form.

The ability to restrain others from committing infringements of copyright is the essence of the right given to the creative person or author under copyright. It is the fact that a copyright owner is able to prevent and is given the machinery for preventing others from encroaching upon his monopoly in his work that provides him with the means for deriving a livelihood from the fruits of his intellectual efforts and skill.

The Act makes provision for direct and indirect infringements of copyright, of which the direct infringements are by far the most important.

Direct infringement

A direct infringement of the copyright in a work takes place when another person, without the authority of the copyright owner, does any of the acts that in respect of that work are designated restricted acts and therefore within the monopoly of the copyright owner. As I pointed out in an earlier article when dealing with the scope of copyright, in very general terms infringement amounts to the unauthorized copying of the work, the commercial exploitation

¹For previous articles, see (1979) 8 BML 153, 171 and 188.

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of it or both. Copyright is infringed not only by the misuse or misappropriation of the whole of a work but also by the misuse or misappropriation of a substantial part of the work. The concept 'substantial' relates to quality, not quantity. Thus the copying of a small but essential part of a work would constitute an infringement of copyright, while the copying of a large but inconsequential part of a work would not constitute an infringement.

It is essential to appreciate that copyright in a work is infringed only if there is copying. A work that is very similar to or even identical to another work will not constitute an infringement of that other work if the creator produced it independently and without reference to the other work. Copyright therefore prevents the copying of a work or even of a part of a work, but does not prevent the creation of an identical work without copying.

As I have already mentioned, in regard to an artistic work, one of the restricted acts is the making of a three-dimensional reproduction of a two-dimensional work or the two-dimensional reproduction of a three-dimensional work. Consequently, a person who makes a three-dimensional reproduction of a two-dimensional work, that is, a drawing, infringes the copyright in that drawing.

The copyright in a work is infringed not only

by direct copying but also by indirect copying. Indirect copying takes place when what is copied is not the original work, for example, a drawing, but a reproduction of that drawing, for example, a photograph or even a three-dimensional version of the drawing, such as a model. For example, a yacht made by the copying of another yacht, which was constructed on the basis of a set of drawings, will constitute a three-dimensional reproduction of the drawings and will thus be an infringement of the copyright in those drawings.

Indirect infringement

There are basically two forms of indirect infringement of copyright:

- Infringements committed by anyone importing (other than for private and domestic use), selling, letting, offering or exposing for sale or hire, or distributing infringing copies of a protected work with the knowledge that the copies concerned are infringing copies.
- Infringements committed by anyone permitting a place of public entertainment to be used for the public performance of a protected literary or musical work, in circumstances where the public performance is itself an infringement, with the knowledge that the public performance is an infringement.

An infringement of copyright is actionable at

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JOHANNESBURG:

Carlton Hotel
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CAPE TOWN:

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Thursday 4 October 1979

PRETORIA:

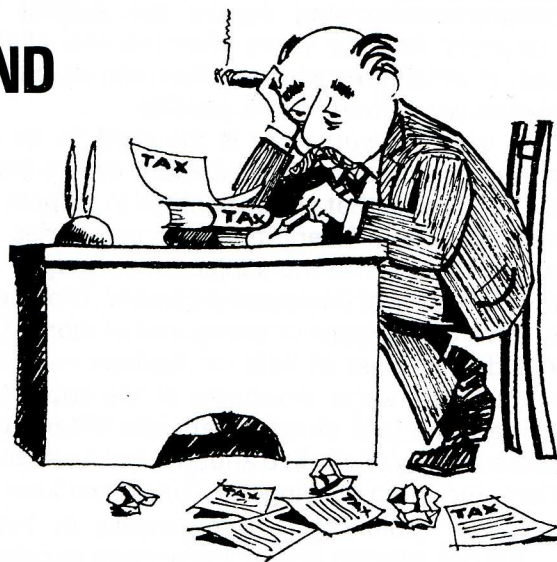
Burgerspark Hotel
Thursday 18 October 1979

DURBAN:

Maharani Hotel
Tuesday 23 October 1979

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the suit of the owner of the copyright, who can claim an interdict restricting the performing of the infringing act and damages or an account of profits. If a defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work concerned, the copyright owner is not entitled to recover damages, although he is entitled to an account of profits. On the other hand, if the infringement is flagrant, the court is empowered to award such additional damages as it may consider appropriate in the circumstances, by way of a penalty.

The 1978 Copyright Act makes provision for a number of exemptions from copyright infringement. A perusal of these exemptions leads to the conclusion that they are all instances in which it is considered to be in the public interest that the copyright owner should not have an absolute monopoly in the performing of particular acts. I shall not deal with all these exemptions but will merely make reference to those of them that are particularly relevant to the present discussion:

- The copyright in literary, musical and artistic works, cinematograph films, sound recordings and broadcasts is not infringed if the work is used, solely and to the extent reasonably necessary, (a) for purposes of research or private study or personal or private use, (b) for the purposes of criticism or review of the work or of another work, or (c) for the purposes of reporting current events in a newspaper, magazine or similar periodical or in a broadcast or cinematograph film. Under (b) and (c) mention must be made of the source of the extract and of the name of the author.
- The copyright in a literary or musical work or in a cinematograph film, sound recording or broadcast that is lawfully made available to the public is not infringed if quotations are made from them provided that the quotation is compatible with fair practice, the extent of the quotation does not exceed what is justified by the purpose for which it is required, and that due recognition is given to the name of the work and of the author.
- The copyright in a lecture, address or other work of a similar nature that is delivered in public is not infringed if it is reproduced in the press or broadcast and the reproduction or broadcast is for the purpose of information.
- The copyright in an article published in a newspaper or periodical or in a broadcast on any current, economic, political or religious topic is not infringed by the reproduction of the article or the broadcast in the press if it is broadcast, provided that the right of reproduction or broadcasting has not been expressly reserved by the copyright owner, and provided due

recognition is given to the work reproduced or broadcast.

- No copyright subsists in speeches of a political nature, in speeches delivered in the course of legal proceedings, or in the news of the day that are mere items of press information.

All the exemptions from copyright infringement provided for in the Act in effect make inroads on the monopoly in the use of his work afforded to the author by copyright.



Readers' views

Deferred taxation

With reference to the article by Costa Divaris in (1978) 8 *BML* 63 and the subsequent correspondence in (1979) 8 *BML* 179, we can report that we have undertaken some empirical research into certain aspects of generally accepted accounting practice.

This research was not specifically aimed at deferred taxation, but certain statistics relating to deferred taxation were obtained.

As part of a doctoral thesis submitted by Professor B P Botha in 1977, the 1975 financial statements of fifty quoted companies were researched to determine trends in generally accepted accounting practice. A similar project on 100 quoted companies during 1977 is presently under way in this Department.

Extracts from these results are as follows:

1975 Financial statements (fifty companies)

Thirty-four of the fifty companies had provided for deferred taxation; of these, twenty-eight had *implied* that the liability method had been used — no explicit statement to this effect had been made.

One company had used the deferral method, while five companies had provided for deferred tax without any indication of how the amount had been arrived at. It should be borne in mind that statement 1.002 was not yet in force during 1975.

1977 Financial statements (100 companies)

Sixty companies had provided for deferred taxation. Of these, forty-six (or 75%) had used the liability method, and the remainder had used the deferral method. In all instances the method used had been clearly stated, and not implied as in 1975. Only eight companies (or 13%) had given an indication of their policy towards the establishment of a deferred taxation asset (debit balances).

A detailed empirical research programme into generally accepted accounting practice regarding deferred taxation should provide interesting results.

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