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The Newspaperman's Guide to the Law

Second Edition
KW Stuart BA, LLM

The pursuit of the profession of journalism in South Africa is beset with legal obstacles and every journalist must know, and be able to apply, the law as it affects his calling. Through the welter of common law, statute law and case law the thread of matter bearing upon the subject must be traced and writers, and newspapermen in particular, must know something about such diverse statutes as the Atomic Energy Act, the Prisons Act and the Gambling Act as well as the common and case law relating to defamation of character, contempt of court and injuria.

The author of "The Newspaperman's Guide to the Law" had, during the past quarter of a century, been actively involved in this branch of the law and his book represents a distillation of his experience in answering the questions put to him by newspapermen and other journalists.

Some 75 statutes and some 335 decided cases have been referred to and quoted from.

The first edition of the book became something of a *vade mecum* for the working journalist and the book has become prescribed reading for the course in journalism conducted by the South African Society of Journalists. It is believed that it will be of assistance to legal practitioners whose work is in this and related fields.

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Met tussenhofies, kruisverwysings en 'n baie volledige indeks word die gebruiker spoedig gelei na die onderwerp wat hy soek.

Beslissings tot Mei 1977 is ingewerk en groot sorg is bestee aan noukeurigheid, sodat die geleer met vertroue deur die praktyk en geregtelike ampneer geraadpleeg kan word.

Tersaaklike gedeeltes van ander werke, hofreëls en regulasies word volledig weergegee sodat so weinig moontlik ander boeke bygehaal hoef te word vir die daaglikse werk in die hofe.

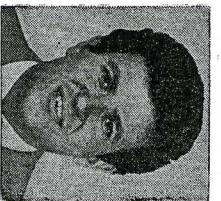
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O H Dean

Registration of Copyright in Cinematograph Films Act



The South African legislature has adopted a new act providing for the registration of copyright in cinematograph films. The act was passed during 1977 and will come into force on as yet undisclosed future date.

Purpose of the act

The South African Copyright Act lays down no formalities for the coming into being of copyright protection. There are thus no formalities for the acquisition of copyright in a cinematograph film. Provided the conditions for the subsistence of copyright in a cinematograph film are met, copyright in such films will come into being automatically.

The Registration of Copyright in Cinematograph Films Act provides for a system of registration of copyright in cinematograph films but registration in terms of this act is in no way conditional to the coming into being of copyright in a cinematograph film. The existence or otherwise of copyright continues to be regulated by the Copyright Act. The purpose of registration of copyright in a cinematograph film under the new act is purely to facilitate proof that, firstly, copyright subsists in a particular cinematograph film in South Africa, and secondly, that a particular person is the owner of the copyright in such film or has acquired a licence under the copyright in such cinematograph film.

Registration of the copyright in a cinematograph film under the act is optional and a copyright owner can choose to prove the subsistence of copyright in a cinematograph film and the fact that he is the owner of such copyright in the normal way, during the course of court proceedings. The onus of proof on these points will, however, be discharged in court proceedings merely on the production of a certificate issued under the act. In consequence, registration of the

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copyright in a cinematograph film under the new act will be of practical value to a copyright owner as it will enable him to avoid delays which would normally be caused by the necessity of having to gather material to prove the subsistence of copyright in a film and his title to such copyright before commencing court proceedings and, by virtue of this fact, will also lead to a reduction in the costs of bringing copyright infringement proceedings.

Register of copyright in cinematograph films

The act provides for the creation of the office of registrar of copyright and places the administration of the act and the register of copyright in cinematograph films under his jurisdiction. The act provides further for the entry of particulars of all applications to register copyright in cinematograph films and all registrations of such copyright, and that the registrar will reflect the names and addresses of the owners of the copyright, as well as such details in respect of all licensees of the copyright. Assignments of the copyright in cinematograph films can be recorded in the register. The register will also reflect the

date of registration of the copyright (application date), and the date of expiration of a registration or a licence. A copyright registration will expire upon the determination of the copyright in the particular cinematograph film, in terms of the Copyright Act.

A person aggrieved by the non-insertion in, or omission from, the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply to the court or to the registrar for rectification of the register.

Procedure for obtaining registration

Application for registration of copyright in a cinematograph film can be made by any persons claiming to be the owner of the copyright in such film by virtue of the provisions of the Copyright Act. Application must be made in the prescribed form but as yet no regulations have been published under the act and it is therefore not possible to state at this stage what information an application will be required to contain. It is, however, obvious that the applicant will have to furnish particulars on the circumstances of the making of the film, such as the place of manufacture, and details of the person who is considered to be the "maker" of the film for purposes of the Copyright Act. The application is examined by the registrar and he can accept it unconditionally, accept it subject to conditions, or refuse it. The decision of the registrar in regard to the acceptance of the application is subject to appeal to the Supreme Court of South Africa. After acceptance, provision is made for the application to be advertised in a manner which will be prescribed in the future.

For a period of one month after the date of advertisement of the application, any person may object to the application. The one month period is, however, extendible. The objector's grounds of opposition to the application are required to be set out in a notice of opposition. The applicant has an opportunity, within one month after the lodging of the notice of opposition, within which to file a counter-statement setting out the grounds on which he relies in support of his application. This period is also

extendible at the discretion of the registrar.

Provision is made in the act for an opposition to be determined in accordance with an informal procedure which involves the matter being argued before the registrar at a hearing purely on the strength of the facts contained in the notice of opposition and the counter-statement. No award is made as to costs in informal opposition proceedings and there is no right of appeal against the decision of the registrar in such proceedings.

The consent of both parties is necessary before an application can be finalized in terms of the informal procedure.

The formal opposition procedure provided for in the act involves the filing of evidence by both parties on affidavit in terms of procedure to be prescribed by regulations. All opposition proceedings culminate with a hearing before the registrar and the registrar can make an award as to costs arising out of formal opposition proceedings. The decision of the registrar in formal opposition proceedings is subject to appeal to the Supreme Court of South Africa.

Assignment and licences

As previously stated, the act makes provision for the recordal of assignments and licences and procedures are prescribed for the recordal of such entries. Applications for assignment or the recordal of a licence must be accompanied by documentary confirmation of the applicant's claim to the right concerned.

Evidence

The act provides that the register of copyright in cinematograph films shall be *prima facie* evidence of the matters recorded in such register. Similarly, the act provides that a certificate issued by the registrar will be *prima facie* evidence of the matter which is the subject of the certificate. Furthermore, the act provides that the fact that a person is registered as the owner or licensee of the copyright in a cinematograph film shall be *prima facie* evidence of the validity of the original registration of that copyright and of all subsequent assignments and transmissions thereof.

In court proceedings where the validity of the registration of copyright in a

cinematograph film is at issue and is decided in favour of the owner of the copyright, the court may certify to that effect, and if it so certifies, then in any subsequent civil proceedings in which the validity of the registration of that copyright is in issue, the owner of the copyright, on obtaining a final order or judgment in his favour, will be entitled to recover his attorney and client costs, unless the court in the subsequent proceedings decides otherwise. This is a departure from the normal principle where a successful litigant is usually only entitled to claim his so called "party and party costs".

As stated previously, the evidential value of a certificate issued by the registrar under the act represents the entire value of a registration under the act. The benefit to the copyright owner is that he is spared the trouble and expense of proving that his work enjoys copyright and that he is the owner of that copyright, in court proceedings, which could, in normal circumstances, involve him in bringing witnesses to South Africa from abroad in order to establish the necessary facts.

A certificate from the registrar relating to the copyright in a cinematograph film is only *prima facie* evidence and can be rebutted by a defendant in infringement proceedings. The onus, however, will in these circumstances be on the defendant to prove that the work does not enjoy copyright protection or that the plaintiff does not have the rights which he claims in the work. This onus could be an exceedingly difficult one to

discharge, particularly bearing in mind that where a certificate from the registrar is put forward as evidence of the subsistence of copyright and the title to the copyright, documentary confirmation of these facts will not be before the court in normal circumstances. It is therefore considered that it is essential that provision be made in the regulations to be prescribed under the act for interested parties to have free access to documentation filed in support of registrations under the register of copyright in cinematograph films.

Comments

The official fees payable for registrations under the new act are as yet unknown and will be prescribed by regulation in due course. It is therefore difficult at this stage to give any indication of what will be involved in securing registrations under the act. Since the broad outline of the registration procedure laid down in the act conforms very closely with registration procedure under the Trade Marks Act, it is possibly a fair assumption that registration of the copyright in a cinematograph film will be comparable in most respects to procuring registration of a trade mark under the Trade Marks Act.

It is felt that registration of the copyright in a cinematograph film under the act can serve a useful purpose particularly where a copyright owner has the apprehension that there is a likelihood of the copyright being infringed. A lot might, however, depend upon the cost of obtaining a registration under the act. □

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