

# COPYRIGHT

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Protectable works

## Outline

Works that are eligible for protection under section 2(1) of the Copyright Act:

- literary works
- musical works
- artistic works
- cinematograph films
- sound recordings
- broadcasts
- programme-carrying signals
- published editions
- computer programs

## 1. Literary works

- any combination of letters and /or numerals, which embody the results of a measure of intellectual effort or skill
- See Dean p. 1-7, copyright Act (listing types of works within this category) and *Payen Components SA Ltd v Bovic Gaskets CC*
- The *Payen case* is important for the discussion of the distinction between computer generated and computer aided works.

## Examples of the Payen code:

- AF 240 denotes a cylinder head gasket for an Alfa Romeo 1300
- CJ 494 a head set for a Nissan L 185

“The catalogue cum price list is of a kind as may qualify as a 'literary work' in the generous sense that that phrase is used in copyright law. Moreover, it has been 'written down' in a material form. Further, there has been enough labour and skill expended both in England and South Africa for the same to be 'original', in the sense of copyright law”.

- pp.448-449

## 2. Musical works

- s. 1 (*q*) of Act 125 of 1992 inserted the following definition into the Act:  
“...a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.”
- The author(s) of a musical work and a literary work obtain copyright in the work.

## Author works v media works

The copyright in media works differs in character and duration from copyright in author works. It is designed to protect the medium in which the work is fixed.

## Author works v media works

- Copyright therefore exists in the 'sound recording' of a musician's performance of a song.
- The 'author' of a sound recording is the person who 'made arrangements' for the recording to be made.

### 3. Artistic works

These are defined in section 1(1) as:

“...irrespective of the artistic quality thereof-

- (a) paintings, sculptures, drawings, engravings and photographs;
- (b) works of architecture, being either buildings or models of buildings; or
- (c) works of craftsmanship not falling within either paragraph (a) or (b).”

### Copyright in an international context

- There is no “international copyright” that automatically protects an author’s work throughout the world
- Protection in a particular country depends on the national laws of that country and international treaties that it has signed

Copyright in an international context:  
examples of USA and SA relations

- International Copyright Relations of the US is available at this link

**<http://www.copyright.gov/circs/circ38a.pdf>**

- **Both South Africa and USA give effect to the Berne Convention on the Protection of Literary and Artistic works**

The Berne Convention:

- The Berne Convention is available at this link  
**[http://www.wipo.int/treaties/en/ip/berne/trtdocs wo001.html](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html)**

- The Berne Convention states that the copyright law of the country where copyright is claimed shall be applied

**But:**

Article 7.8 states that "unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work"

## The rule of the shorter term

Available at this link:

**[http://en.wikipedia.org/wiki/Rule of the shorter term](http://en.wikipedia.org/wiki/Rule_of_the_shorter_term)**

## 4. Cinematograph films

Defined in the Act as:

“any fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of images capable, when used in conjunction with any other mechanical, electronic or other device, of being seen as a moving picture and of reproduction, and includes the sounds embodied in a sound-track associated with the film, but shall not include a computer program”

## Cinematograph films

### Includes:

- Video tapes
- Laser discs
- Compact discs

### Different from:

- The scenario of the film (literary work)
- Musical score (musical work)
- The computer programme storing the data/sequences of images (constitute a computer program)

## cinematograph film vs computer program

- Discussed in

### ***Golden China TV Game Centre v Nintendo Co Ltd 1997 (1) SA 405 (A):***

- cinematograph film stated by the court to comprise of three elements:
  - A sequence of images
  - Is fixed on a material
  - Is capable of being shown as a moving picture



## Video games fall into the definition of cinematograph work

- [in the definition of 'cinematograph work'] very wide terms have been employed. The only reason for this can be an intention to cover future technical innovations by using general words. Legislative inertia ought not to impede human ingenuity and the reasonable protection thereof. Typical is the case of computer programs. The wide wording of the Act made it possible to grant them protection as literary works (*Northern Office Micro Computers (Pty) Ltd and Others v Rosenstein* 1981 (4) SA 123 (C) ; *Payen Components SA Ltd v Bovic CC and Others* 1995 (4) SA 441 (A)).
- The Legislature elected, quite prudently, to define terms that have somewhat different ordinary meanings. That means that the definitions have precedence and it would be wrong, at least in the context of this Act, to whittle down wide language to fit one's preconceived ideas of what the terms mean or should mean. The Act is intended not to stifle, but rather to promote human ingenuity and industry.

## 5. Sound recordings

“any fixation or storage of sounds, or data or signals representing sounds, capable of being reproduced, but does not include a sound-track associated with a cinematograph film”

## 6. Broadcasts

- An independent subject of copyright and may embody other independent works e.g.,
  - Cinematograph films
  - Literary works
  - Artistic works

## 7. Programme-carrying signals

A broadcast ‘while in the course of transmission through a satellite’

-Dean p.1-12

## 8. Published editions

- Typographical arrangements featured on the pages of a book or other material
- Must embody either literary work or musical work

-Dean p.1-13

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## 9. Computer programs

- Were previously part of literary work
  - Introduced as a separate category by the Copyright Amendment Act, 1992
  - “a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result”- s 1(1) Copyright Act
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