



Copyright:

Requirements for vesting of copyright



Outline

Requirements that must be satisfied:

- a) There must be a 'work'
- b) The work must fall into the categories listed in s 2(1)
- c) Originality
- d) Existence in a material form
- e) The author must be a 'qualified person' under s 3(1)
- f) Publication



Requirements: a) originality

- S 2(1) presupposes, as a general rule, two different inquiries: first, whether the work relied upon falls within one of the categories and, if so, whether it is original
- 'To some extent the concept of what constitutes a "work" within the Act and the concept of originality are intertwined. It is difficult to discuss what amounts to a "work" without discussing originality, since without a sufficient degree of "originality" a "work" will not come into existence .

-Blakeney and McKeough *Intellectual Property: Commentary and Materials* (1987) at 27

Quoted in *Waylite Diary CC v First National Bank Ltd* 1995 (1) SA 645 (A) at p.649



Originality (cont).

What is originality in the context of copyright?

- Original skill or labour should be brought to bear in the work
- The work must emanate from the author, not copied from another work

-*Kalamazoo Division (Pty) Ltd v Gay* 1978 (2) SA 184 (C)

○ ○ ○ | *-Kalamazoo Division (Pty) Ltd v
Gay 1978 (2) SA 184 (C)*

The forms in respect of which the applicant claimed copyright were:

- "employee's earnings record",
- "time and wage register" and the
- "pay advice slip".

○ ○ ○ | *-Kalamazoo Division (Pty) Ltd v
Gay 1978 (2) SA 184 (C)*

Judgment:

The 'applicant has established that the amount of knowledge, labour, judgment and skill applied to the compilation of the applicant's forms entitles that compilation to copyright'.
p.192



Can drawings of a technical nature be
'artistic'?

Saunders Diaphragm Valve
*Klep Valves (Pty) Ltd v Saunders
Valve Co Ltd* 1987 (2) SA 1 (A)



b) Existence in a material form

- Broadcasts and programme-carrying signals are excluded from this requirement
- Material form/expression of ideas is protected by copyright
 - Natal Picture Framing Co Ltd v Levin* 1920 WLD 35
- Material form fosters certainty
 - Green v Broadcasting Corporation of New Zealand* [1989] RPC 700 (PC)

○ ○ ○ | *Natal Picture Framing Co Ltd v Levin: Pictures in dispute*

<u>Applicant's:</u>	<u>Respondent's:</u>
Ship sailing from Cape Town, still alongside the quay	Ship has just put out to sea
Cheering crowds at the docks, on the right side of the picture	Cheering crowd on the left side and figures much larger
Medallions with the portraits of members	Medallions with the portraits identical but arranged in a different order
Title: 'Vrijheids Deputatie'	Title: 'Republiek Deputatie'

○ ○ ○ | Existence in a material form (cont).

...where an original combination of ideas is represented, any representation of that combination, even though there be many variations of detail, may easily be a copy or colourable imitation of the original representation.

Natal Picture Framing Co Ltd v Levin
1920 WLD 35



Material form fosters certainty: -

Green v Broadcasting Corporation of New

Zealand

‘...a dramatic work must have sufficient unity to be capable of performance and that the features claimed as constituting the "format" of a television show, being unrelated to each other except as accessories to be used in the presentation of some other dramatic or musical performance, lack that essential characteristic’.



c) Qualified person

individuals:

- o South African citizen or
- o is domiciled or resident in the Republic

juristic persons:

- o a body incorporated under the laws of the Republic
- Section 3

Note:

- o Works in respect of in respect of which copyright is not conferred by section 3 are protected by virtue of section 4 if they are first published in the Republic



d) Publication

“Subject to paragraph (e), a work shall be deemed to have been published if copies of such work have been issued to the public with the consent of the owner of the copyright in the work in sufficient quantities to reasonably meet the needs of the public, having regard to the nature of the work”.

-s1 (5) (a)