



Copyright



Outline

- Duration
- Authorship/ownership of copyright
- Content of copyright

1. Duration

- Literary, musical and artistic works (excluding photographs) are protected for the life of the author and 50 years from the end of the year in which the author died; If before the author's death there was no:
 - Publication
 - Public performance
 - Offer for sale to the public of records
 - Broadcastingthe term of copyright continues to subsist for a period of fifty years from the end of the year in which the first of these acts is done
-s3(2)(a)
- S 3(2)(b)ff- (4) provide for the terms of other types of works

2. Authorship/ownership of copyright

A question of fact:

- Person who is responsible for the creation of the embodiment of the work
- Co-authorship or joint authorship is possible

Computer programme	Person who exercised control over the making of the programme
Photograph	Person responsible for the composition of the photograph
Sound recordings	Person who makes the arrangements for the recording
cinematograph films	Person who makes the arrangements for the making of the film
Broadcast	The first broadcaster
programme-carrying signals	First person emitting the signal to a satellite
published editions	publisher

Authorship/ownership of copyright (cont).

Situations for discussion:

- Can a juristic person be an author?
- Work produced under a 'contract of work' not 'of service'
- Work made in the course of an employee's contract of employment
- Work made 'under the direction or control of the state'

a) Can a juristic person be an author?

- general position:
the author of a work under Section 3(1) (b) can be a juristic person
- courts have considered whether a juristic person could be the author of a literary work but no decision was made on the question in the case of *Fax Directories (Pty) Ltd v SA Fax Listings CC 1990 (2) SA 164 (D)*

'Copyright

No reproduction of this directory in whole or in part is allowed without the express permission of Fax Directories (Pty) Ltd. Legal proceedings will be instituted against anyone reproducing material without the permission of the publisher.'

'Publication of the Pink Pages

This directory is published by Fax Directories (Pty) Ltd
PO Box 53170 Troyeville 2139 Johannesburg....'

Fax Directories (Pty) Ltd v SA Fax Listings CC

The respondent's contentions (p.165):

- the applicant could not be the author of 'The Pink Pages' as the author had to be a natural person and not a company
- the applicant was not the owner of the copyright in terms of s 21(1)(d) of the Act as there was no proof of a contract of service in respect of the alleged employees of the applicant and that the presumption in s 26(3) of the Act did not apply
- the copying was not substantial and was indeed trivial.

b) Work produced under a 'contract of work' not 'of service'

- At common law there is a distinction between a contract of service (*locatio conductio operarum*) and a contract of work (*locatio conductio operis*): *Smit v Workmen's Compensation Commissioner* 1979 (1) SA 51 (A).
- There can be no doubt that the phrase 'contract of service' in s 21(1)(d) does not include a contract of work.
-*Marais v Bezuidenhout* 1999 (3) SA 988 (W)

Work produced under a 'contract of work' not 'of service' (cont).

A court will primarily be influenced by the actual contract before it rather than by what the parties try to call it.

-Nel v Ladismith Co-Operative Wine Makers and Distillers Ltd (2000) 3 All SA 367 (C)

c) Work made in the course of an employee's contract of employment

Relevant considerations:

- whether, in terms of s 21(1)(d), the computer programs were authored by King 'in the course of [his] employment by [the Bureau] under a contract of service'
- the nature of King's duties in terms of the employment contract
 - *King v SA Weather Service [2008 SCA 143]*:

d) Work made 'under the direction or control of the state'

Copyright vests in the state under s.5 if:

- the work was made 'under the direction' of the State
- the production of the work needs to be the principal object of State direction and control, and not merely an incidental or peripheral consequence of some generalised governmental licensing or monitoring power

-Biotech Laboratories (Pty) Ltd v Beecham Group plc 2002 (4) SA 249 (SCA)

3. Content of copyright

- The nature of rights that the Act grants to the copyright holder;
Sections 6-11B

For discussion:

Can cartoon strips be regarded as 'Literary work' or 'artistic work'?

-Rapid Phase Entertainment CC v SABC [1997] JOL 393 (W)