

REPUBLIC OF SOUTH AFRICA

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# COPYRIGHT AMENDMENT BILL

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*(As presented by the Portfolio Committee on Trade and Industry (National Assembly)  
(The English text is the official text of the Bill.)*

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(MINISTER OF TRADE AND INDUSTRY)

**[B 13B—2017]**

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

                         Words underlined with a solid line indicate insertions in existing enactments.

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## **BILL**

To amend the Copyright Act, 1978, so as to define certain words and expressions; to allow for further limitations and exceptions regarding the reproduction of copyright works; to provide for the sharing of royalties in copyright works; to provide for the payment of royalties in respect of literary, musical, artistic and audiovisual works; to provide for resale royalty rights; to provide for recordal and reporting of certain acts; to provide for the accreditation of collecting societies; to provide for a mechanism for settlement of disputes; to provide for access to copyright works by persons with disabilities; to provide for the licensing of orphan works; to strengthen the powers and functions of the Copyright Tribunal; to provide for prohibited conduct in respect of technological protection measures; to provide for prohibited conduct in respect of copyright management information; to provide for protection of digital rights; to provide for certain new offences; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 98 of 1978, as amended by section 1 of Act 56 of 1980, section 1 of Act 66 of 1983, section 1 of Act 52 of 1984, section 1 of Act 13 of 1988, section 1 of Act 125 of 1992, section 50 of Act 38 of 1997, section 1 of Act 9 of 2002, section 224 of Act 71 of 2008 and section 3 of Act 28 of 2013**     5

**1.** Section 1 of the Copyright Act, 1978 (hereinafter referred to as “the principal Act”), is hereby amended—

(a) by the insertion before the definition of “adaptation” of the following definition:     10

“**‘accessible format copy’** means a copy of a work in an alternative manner or form, which gives a person with a disability access to the work and which permits such person to have access as feasibly and comfortably as a person without a disability;”;

(b) by the insertion after the definition of “artistic work” of the following definitions:     15

“**‘art market professional’** includes—

- (a) an auctioneer or auction house;
  - (b) the owner or operator of an art gallery;
  - (c) the owner or operator of a museum;
  - (d) an art dealer; or
- 20

- (e) a person otherwise involved in the business of dealing in artworks; **‘audiovisual work’** means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which either can be perceived, reproduced or communicated through a device, and includes a cinematograph film;”;
- (c) by the substitution for the definition of “collecting society” of the following definition:  
 “**‘collecting society’** means a non-profit company contemplated in the Companies Act, 2008 (Act No. 71 of 2008)—  
 (a) that is owned by holders of rights in terms of this Act or the Performers’ Protection Act, 1967 (Act No. 11 of 1967);  
 (b) whose only members are holders of rights in terms of this Act or the Performers’ Protection Act, 1967 (Act No. 11 of 1967);  
 (c) to whom members have granted mandates to license, manage or otherwise represent rights contemplated in this Act or the Performers’ Protection Act, 1967 (Act No. 11 of 1967), on behalf of and for the benefit of those members or exercise any of the actions contemplated in section 22C(2); and  
 (d) whose primary purpose is executing the mandates contemplated in paragraph (c);”;
- (d) by the insertion after the definition of “collecting society” of the following definition:  
 “**‘commercial’** means the obtaining of economic advantage or financial gain in connection with a business or trade;”;
- (e) by the insertion after the definition of “community protocol” of the following definition:  
 “**‘Companies Act’** means the Companies Act, 2008 (Act No. 71 of 2008);”;
- (f) by the insertion after the definition of “copyright” of the following definition:  
 “**‘copyright management information’** means information attached to or embodied in a copy of a work that—  
 (a) identifies the work and its author or copyright owner; or  
 (b) identifies or indicates some or all of the terms and conditions for using the work or indicates that the use of the work is subject to terms and conditions;”;
- (g) by the insertion after the definition of “National Trust” of the following definitions:  
 “**‘open licence’** means a royalty-free, non-exclusive, perpetual, irrevocable copyright licence granting the public permission to do an act for which the permission of the owner of copyright, or the author, is required;  
**‘orphan work’** means a work in which copyright subsists and the owner of a right in that work—  
 (a) cannot be identified; or  
 (b) is identified, but cannot be located;”;
- (h) by the insertion after the definition of “performance” of the following definitions:  
 “**‘performer’** has the meaning ascribed to it in section 1 of the Performers’ Protection Act, 1967 (Act No. 11 of 1967);  
**‘person with a disability’** means a person who has a physical, intellectual, neurological, or sensory impairment and who requires the work to be in a format that enables that person to access and use the work in the same manner as a person without a disability;”;
- (i) by the insertion after the definition of “sound recording” of the following definitions:  
 “**‘technologically protected work’** means a work that is protected by a technological protection measure;  
**‘technological protection measure’**—  
 (a) means any process, treatment, mechanism, technology, device, system or component that in the normal course of its operation prevents or restricts infringement of copyright in a work; and  
 (b) does not include a process, treatment, mechanism, technology, device, system or component, to the extent that in the normal course

of its operation, it controls any access to a work for non-infringing purposes;

**‘technological protection measure circumvention device’** means a device primarily designed, produced or adapted for purposes of enabling or facilitating the circumvention of a technological protection measure;” and

- (j) by the insertion after the definition of “traditional work” of the following definitions:

“**‘Tribunal’** means the Copyright Tribunal established by section 29;  
**‘visual artistic work’** means an artistic work as contemplated in paragraph (a) of the definition of ‘artistic work’;”.

### Insertion of section 2A in Act 98 of 1978

2. The following section is hereby inserted in the principal Act after section 2:

#### “Scope of copyright protection

**2A.** (1) Copyright protection subsists in expressions and not—

- (a) in ideas, procedures, methods of operation or mathematical concepts;  
or

(b) in the case of computer programs, in interface specifications.

(2) A table or compilation which by reason of the selection or arrangement of its content, constitutes an original work, shall be protected as such by copyright.

(3) The copyright protection of a table or compilation contemplated in subsection (2) does not extend to its content.

(4) No protection shall—

- (a) extend to an expression—

(i) inextricably merged with an idea such that the idea can be expressed intelligibly only in one or a limited number of ways;  
or

(ii) when the particular expression is required by law; or

- (b) subsist in—

(i) official texts of a legislative, administrative or legal nature or in official translations of those texts; or

(ii) speeches of a political nature, in speeches delivered in the course of legal proceedings or in news of the day that are mere items of press information: Provided that the maker of the speeches referred to in this subparagraph shall have the exclusive right of making a collection of the speeches in question.”.

### Amendment of section 5 of Act 98 of 1978, as amended by section 5 of Act 52 of 1984 and section 5 of Act 125 of 1992

3. Section 5 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the state or such international or local [organizations] organization as may be prescribed.”.

### Amendment of section 6 of Act 98 of 1978, as amended by section 3 of Act 56 of 1980 and section 6 of Act 125 of 1992

4. Section 6 of the principal Act is hereby amended—

- (a) by the insertion after paragraph (e) of the following paragraphs:

“(eA) communicating the work to the public by wire or wireless means;

(eB) making the work available to the public by wire or wireless means, so that any member of the public may access the work from a place and at a time chosen by that person;

(eC) distributing the original or a copy of the work to the public;” and

- (b) by the substitution for paragraph (g) of the following paragraph:  
 “(g) doing, in relation to an adaptation of the work, any of the acts specified [in relation to the work] in paragraphs (a) to [(e)] (eC) inclusive.”.

**Insertion of section 6A in Act 98 of 1978**

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5. The following section is hereby inserted in the principal Act after section 6:

**“Share in royalties regarding literary or musical works**

- 6A.** (1) For the purposes of this section, ‘**royalty**’ means the gross profit made on the exploitation of a literary work or musical work by a copyright owner or a person who has been authorized by the author to do any of the acts contemplated in section 6. 10
- (2) Notwithstanding—
- (a) the assignment of copyright in a literary or musical work; or
- (b) the authorization by the author of a literary or musical work of the right to do any of the acts contemplated in section 6, 15
- the author shall, subject to any agreement to the contrary, be entitled to receive a fair share of the royalty received for the execution of any of the acts contemplated in section 6.
- (3) (a) The author’s share of the royalty contemplated in subsection (2) shall be determined by a written agreement in the prescribed manner and form, between the author and the copyright owner, or between the author and the person contemplated in subsection (2)(b), or between their respective collecting societies. 20
- (b) Any assignment of the copyright in that work, by the copyright owner, or subsequent copyright owners, is subject to the agreement between the author and the copyright owner, contemplated in paragraph (a), or the order contemplated in subsection (4). 25
- (4) Where the author and copyright owner, or the person contemplated in subsection (2)(b), cannot agree on the author’s share of the royalty, either party may refer the matter to the Tribunal for an order determining the author’s share of the royalty. 30
- (5) The agreement contemplated in subsection (3)(a) must include the following:
- (a) The rights and obligations of the author and the copyright owner or the person authorized by the author to use the work as contemplated in subsection (2)(b); 35
- (b) the author’s share of the royalty agreed on, or ordered by the Tribunal, as the case may be;
- (c) the method and period within which the amount must be paid to the author by the copyright owner, or the person authorized to use the work as contemplated in subsection (2)(b), to the author; and 40
- (d) a dispute resolution mechanism.
- (6) This section does not apply to—
- (a) a copyright owner who is the author of the literary or musical work in question; 45
- (b) a work created in the course of employment contemplated in section 21(1)(b) or (d); or
- (c) a work where copyright is conferred by section 5 in the state, or a prescribed local or international organization.
- (7) (a) This section applies to a literary or musical work where copyright 50
- in that work was assigned before the commencement date of the Copyright Amendment Act, 2017, if that literary or musical work—
- (i) falls within the application of this Act; and
- (ii) is still exploited for profit.
- (b) The Minister must— 55
- (i) develop draft regulations setting out the process to give effect to the application of this section to a work contemplated in paragraph (a);
- (ii) conduct an impact assessment of the process proposed in the regulations contemplated in subparagraph (i); and