

# IPSP066 - Internet Aspects of Copyright and Trade Marks

Assignment 02 - 827787

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## Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name here under:

- Name: **Nyameko Lisa** (Student Number: **7874-909-3**)

## NOTE

Please note that footnotes will be denoted as <sup>1</sup> and will appear at the bottom of the page.

References will be denoted by [1] and will appear at the end of the document.

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<sup>1</sup>This is a footnote.

## 1 Will Sibusiso be liable if consent from the rights holders has not been obtained? To whom will he be liable?

As a Convention Member the provisions of [section 5][1], [section 104(c,d)][2], [Article 9(1)][3], [Article 1(2)][4], [Article 5(2)][5] and [Article 1(4)][6] which dictate that the statutes of the Republic shall govern international copyright protection as it pertains to the Internet. Furthermore as per the provisions of [sections 1 and 2(1)(b,e)][1], [sections 101 and 102(a)(2,7)][2] and [Article 2(1)][5] the sound recordings shall be considered as **protected artistic works** or **sound recordings**, where the samples of those works constitute **adaptations** or **derivative works**.

As per the provisions of [sections 1, 3, 4(1)(a)][1], [section 101][2], [Article 14][3], [Articles 2 and 3][7], [Article 3 and 9(1)][5], the **authors**, will in this instance be considered as the rights holders of the sound recording samples, and they are understood to be the performers, producers, licensees and broadcasting organisations of the sound recordings.

Linking is a means of exploiting third-party content on the Internet, and thus enhancing a web-page with coloured or underlined descriptive words **Hyperlinked** to Uniform Resource Locator (URL), linking to the audio samples. The mere creation of the links does not in and of themselves constitute copyright infringement.

However, depending on the licensing / contractual conditions of the links to the samples, Sibusiso may find himself liable to the proprietors and content generators of the sites hosted on servers in the United States of America on which the samples appear, **in addition to** the original authors of the sound recordings for contributory infringement, should the sound recordings be hosted on those American servers illegally.

## 2 Where will an infringement action against him be instituted?

Infringement action can be instituted against within the Republic or within the United States of America. In particular however, given that the defendant Sibusiso is domiciled or resident of, and his business is registered within the Republic, the High Courts of the Republic have jurisdiction.

However should Sibusiso, the defendant, be a foreign peregrinus (neither domiciled nor resident) of all South African High and Magistrate Courts, then the plaintiff's area of residence, or where the conclusion and/or breach of contract occurred, i.e. the United States, will hold jurisdiction. Regardless however, the parties cannot themselves submit to or choose a specific magistrate's courts in their agreement.

## 3 What law will apply?

Issues of contract or trade practice law or both may arise in addition to issues of copyright law. Deepening on the "click-wrap" or implied license, a number of subjective implications may arise pertaining to the whether Sibusiso was in fact eligible or not to hyperlink the multimedia material for commercial purposes on his own website.

The following are potential statutory rights of the respective holders that may be affected, specifically as it pertains to copyright law:

- Exclusive right of reproduction [section 9(a)][1], [section 106(1)][2], [Article 9(1) and (2)][5], [Article 7 and 11][7] and [Article 2(a-e)][8],

- Exclusive right of offering by way of trade, directly or indirectly, a reproduction of the sound recording [section 9(b)][1], [section 106(3)][2],
- Exclusive right of publication, distribution or broadcast to the public, or causing the sound recording to be transmitted in a diffusion service [section 9(c-d)][1], [Article 11<sup>bis</sup>(1)(i)-(ii)][5], [Article 6(1)][6], [Article 8(1) and 12(1)][7] and [Article 4][8],
- Exclusive right of communication to the public of a performance [section 9(e)][1], [section 106(6)][2], [Article 11(1)(i)-(ii)][5], [Article 8][6], [Article 13-15][7] and [Article 3][8], and
- Exclusive right<sup>2</sup> of adaptation, arrangement and other alteration [section 6(f-g)][1], [Article 12][5] and [Article 16][7].

## References

- [1] Copyright Act No. 98, 1978.
- [2] Title 17 of the United States Code: U.S. Copyright Act, 1976.
- [3] Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994.
- [4] Directive 2000/31/EC of the European Parliament and of the Council, 2000.
- [5] Berne Convention for the Protection of Literary and Artistic Works, 1886.
- [6] WIPO Copyright Treaty, 1996.
- [7] WIPO Performances and Phonograms Treaty, 1996.
- [8] Directive 2001/29/EC of the European Parliament and of the Council, 2001.

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<sup>2</sup>Sampling constitutes an adaptation.