

IMPORTANT INFORMATION: READ NOW

DEPARTMENT OF MERCANTILE LAW

ESSENTIAL COPYRIGHT LAW

IPSP01X

Tutorial Letter 101/3/2017

**SCHEME OF WORK, STUDY RESOURCES AND
ASSIGNMENTS**

Contents

- 1 A word of welcome**
- 2 Tuition rationale**
- 3 Communication with your lecturers**
- 4 Communication with the University administration**
- 5 Study material**
- 6 How the assignment system works**
- 7 How the examination system works**
- 8 Assignments**

1 A WORD OF WELCOME

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We will do our best to make your study of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

This tutorial letter contains important information about this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

In this tutorial letter, you will find the assignments for the semester and instructions on the preparation and submission of the assignments.

This tutorial letter also includes certain general and administrative information about this module. Please study this section of the tutorial letter carefully.

You please have to visit the myUnisa website for IPSP01X regularly and read all the correspondence (including the welcome page messages, announcements and mylife emails) immediately and carefully, as it contains important and sometimes urgent information.

We hope that you will enjoy this module and wish you all the best!

2 TUITION RATIONALE

Essential Copyright Law (IPSP01X) is one of the first four modules offered as part of a joint intellectual property programme by the University of South Africa and the WIPO Worldwide Academy. The focus of this module is on the special circumstances prevailing in developing countries. This module will approach the subject-matter against the background of international conventions and the obligations they impose on developing countries. It will then be demonstrated, using South African law as an example, how these obligations have been discharged. You will be expected to examine the law of your own countries to determine how these obligations have been discharged, or how they should be discharged.

Students who have completed the DL101 module and have registered for the WIPO/UNISA Specialisation Programme in Intellectual Property Law for the first time should note that this is an advanced module dealing with the finer detail and more complicated aspects of the topic. This module will therefore require a far greater effort on your part than did the DL101 module as well as an independent, responsible and critical approach.

The purpose of this module is to equip you with the basic knowledge and skills to apply the legal principles pertaining to Copyright Law within the structure and functioning of the legal systems of developing countries.

You will not be able to rely solely on the lecture notes. Indeed, it will be essential to supplement these by having recourse to the relevant statutes and decisions of the courts, and also by consulting the prescribed materials.

After studying this module, completing the activities and critically evaluating your own responses, you should be able to use your knowledge of the general principles of the law of copyright in everyday situations, understand the basic structure and functioning of copyright law, engage with selected legal texts pertaining to copyright law, pass on knowledge obtained through your studies to members of organisations or bodies involved in the practice and

regulation of the copyright system.

3 COMMUNICATION WITH YOUR LECTURERS

The lecturers responsible for this module are as follows:

Lecturer's name:	Prof S Geyer
Building and office number:	Cas van Vuuren Building 6-150
E-mail address:	geyers@unisa.ac.za
Telephone number:	012 429-2753 (+27 12) 429-2753 (international calls)

Letters should be sent to:

The Module leader (IPSP01X)
Centre for Business Law
PO Box 392
UNISA 0003
SOUTH AFRICA

PLEASE NOTE:

1. Lecturers should be contacted regarding course content only.
2. Letters to lecturers may not be enclosed with or inserted into assignments.

4 COMMUNICATION WITH THE UNIVERSITY ADMINISTRATION

Students must address all queries on administrative matters to:

Administrators:	Ms P Mofokeng
Building and office number:	Cas van Vuuren Building 6-157
E-mail address:	cbuslaw@unisa.ac.za
Telephone number:	012 429-8432 / 8774 (+27 12) 429-8432 / 8774 (international calls)
Fax number:	(+27 12) 429-8206 / 2094

Letters should be sent to:

The Administrator
Centre for Business Law
UNISA
PO Box 392
UNISA 0003
SOUTH AFRICA

5 STUDY MATERIAL

5.1 Tutorial material

The tutorial material for Essential Copyright Law consists of the following:

- Tutorial letter 101(this letter)
- A study guide (on the website under Official Study Material)

- Legislation and international instruments
- The course website in general
- Court cases

List of prescribed cases

Fax Directories (Pty) Ltd v SA Fax Listings CC 1990 (2) SA 164 (D)
Galago Publishers (Pty) Ltd v Erasmus 1989 (1) SA 276 (A)
Haupt t/a Soft Copy v Brewers Marketing Intelligence (Pty) Ltd and others 2006 (4) SA 458 (SCA)
Juta & Co Ltd v De Koker 1994 (3) SA 499 (T)
King v South African Weather Service 2009 (3) SA 13 (SCA)
Peter-Ross v Ramesar and Another 2008 (4) SA 168 (C)
Waylite Diary CC v First National Bank Ltd 1995 (1) SA 645 (A)

You will find Tutorial letter 101, the study guide, the legislation and international instruments and the court cases on the course website. If you are not from South Africa, please make sure that you work with a copy of the copyright act of your own country at your elbow.

6 HOW THE ASSIGNMENT SYSTEM WORKS

6.1 Assignments and learning

Assignments are seen as part of the learning material for this module. As you do the assignments, study the reading texts, consult other resources or do research, you are actively engaged in learning.

6.2 General remarks

You must submit your assignments electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned contact assign@unisa.ac.za.

To submit an assignment **via myUnisa**

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

6.3 Commentaries and feedback on assignments

Assignments are marked electronically. Marked assignments can be viewed on *myUnisa* and will include commentaries and feedback on the assignment. As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your learning and should help you to be better prepared for the examination.

6.4 Submission dates

Please note that, to facilitate submission, we have arranged that both assignments may be submitted by the same closing date. You must however submit the two assignments SEPARATELY.

The closing dates for the submission of the assignments are:

- ... for the **first semester**

Assignment 01: 20 March 2017

Assignment 02: 24 April 2017

- ... for the **second semester**

Assignment 01: 21 August 2017

Assignment 02: 22 September 2017

6.5 Purpose of the assignment

The assignment is an extremely important part of the module. In the assignment you must prove your ability to deal with the subject-matter. The purpose of assignments is fourfold:

- to assist you to work through the study material
- to teach you the necessary reading and writing skills
- to teach you to make a synthesis from various sources; to gather material and present it in a logical, ordered fashion and with convincing arguments (merely copying the study material is not acceptable)
- pre-examination assessment: this is the only opportunity before you write the examination for us to assess your ability to answer examination-style question.

6.6 General approach to essay-type assignments

In order to answer your assignments satisfactorily, you must work through the prescribed study material carefully. The following basic guidelines can be of help:

- Students normally complain that they cannot rewrite the **study material in their own words**. However, there are three easy steps to accomplish this:
 - **Study** the relevant study material until you understand it. While you are reading the particular section or chapter, make notes or lists of the key words and concepts.
 - Put away your study material and try to **summarise** that particular study unit in your own words by **using your notes** and list of key words.
 - Use the study material to **finalise** your summary with **references to case law** and other relevant authority.
- You are expected to consult cases and legislation when answering an assignment, and to then cite these materials as authority in your answer. **Do not refer to sources you have not personally consulted.**
Quotations from case law and other sources must be kept to a minimum. All quotations must be **accurate** and **acknowledged** fully.
- Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, each student must submit his or her own work. It is unacceptable for students to submit identical assignments on the basis that they worked together. Similarly, it is unacceptable for students to copy anything from the Internet or from any other source without acknowledgement and to pass it off as their own work. **That will amount to plagiarism and all students concerned will be given a zero grade.** Furthermore, these students may be subjected to disciplinary proceedings of the University.
- **Names of cases and Latin expressions** must either be underlined or typed in italics.

- **Neatness** is a prerequisite. **Plan** your answers in advance.
- We restrict the length of assignment answers to teach you to write concise and logical legal arguments. It is very easy to write long, rambling answers but such answers do not earn good marks. You must learn to summarise your study material so that you can answer a question in a factually correct, concise and logical manner. This will also teach you to give similar answers in an examination.
- Please ensure that your name and address, student number, module and module code, and assignment number are written clearly on the assignment cover. This information must be correct.
- Remember that your assignment must have precisely the same number as that given in this tutorial letter.
- It is wise to **make a copy of the assignment** before submitting it, in case electronic submission fails.

7 HOW THE EXAMINATION SYSTEM WORKS

7.1 Examination admission

All students who submit the compulsory assignment 01 in time (before or on the date of submission) will be admitted to the examination regardless of the mark obtained for the assignment. Students who do not submit the compulsory assignment before or on the due date, will not receive admission to write the examination. The mark obtained for the compulsory assignment will count towards your final mark.

Submission of assignment 02 is not compulsory in the sense that it will not grant you admission to the examination. However, the mark obtained for this assignment will count towards your final mark.

The marks obtained for the assignments will --- provided you obtain an examination mark of at least 40% --- count up to 20% of your final mark. You need to obtain a subminimum of at least 40% in the examination before your year mark will be taken into account. This means that a student who has obtained at least 40% in the examination and who has a good year mark will have a great advantage above another student who has no year mark or a poor year mark. You need to obtain a final mark of 50% (combined examination mark and year mark) to pass this module.

7.2 Examination period

This module is a semester module. This means that if you are registered for the first semester you will write the examination in May/June 2017. If you are registered for the second semester you will write the examination in October/November 2017.

Please ensure that you will be available during these periods as no deferments or extensions will be permitted. If you fail to write an examination you will forfeit your fees.

7.3 Examination paper

At the end of the semester you will write **one paper** on Essential Copyright Law. The paper counts 100 marks. This will be a 'take home' examination: you will be given the examination paper to answer at home. The examination must then be submitted on *myUnisa*.

8 ASSIGNMENTS

PLEASE NOTE!!! PLEASE NOTE!!!

1. **Make sure that you submit your assignments before or on the closing date. No extensions will be granted for the submission of assignments.**
2. The marks that you obtain for the assignments will form part of your year mark and may count towards your final mark if you obtain a subminimum of 40% in the examination.
3. We **restrict the length of your assignment answers**. Your answers should, therefore, be concise and logical. This will also teach you to be brief and to the point in the examination.

ASSIGNMENTS FOR SEMESTER 1

ASSIGNMENT 01: COMPULSORY

CLOSING DATE: 20 March 2017

UNIQUE NUMBER: 659072

Your answers to the assignment questions should **not** exceed three typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

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 hereunder:

Name:

Marli is a third year student. Her study guide for ABC123 is available in English only. It was written by the ABC123 lecturers, all of whom are university employees. Marli translates the guide from English to Afrikaans, for her own use. After passing the module with distinction, Marli realises that there is a market for her translation and she starts selling copies of the Afrikaans guide to the next semester's students.

Accept that copyright subsists in the English study guide written by Marli's lecturers. Although a study guide typically consists of a literary work, artistic works and a published edition, your answers to the questions below have to take only the literary work into account.

1. Who are the authors of the English study guide? **[4]**
2. Who is the copyright owner of the English study guide? **[3]**
3. What is the duration of the copyright in the English study guide? **[3]**

4. Does Marli infringe the copyright in the English study guide? Your answer has to discuss the relevant exclusive rights, direct infringement, indirect infringement and relevant copyright exceptions. **[30]**
5. The lecturers for ABC123 become aware of Marli's translation. As they think that it can indeed help the Afrikaans students, they upload a scanned copy thereof onto the ABC123 course website. Marli is very upset about this development. Can she claim copyright in her translation? **[10]**

TOTAL: 50 MARKS

ASSIGNMENT 02

CLOSING DATE: 24 April 2017

UNIQUE NUMBER: 773723

Your answers to the assignment questions should **not** exceed three typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

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 hereunder:

Name:

QUESTION 1

Henry is employed as a junior programmer at XYZ Software. His direct supervisor is Meagan, who is also employed by XYZ. Meagan tells Henry what programs need to be created, sets deadlines when specific parts of a project needs to be completed, and helps Henry with the more difficult aspects of the programs he is working on.

- 1.1 Who is the author and who is the owner of the copyright in the programs? (6)
- 1.2 What is the duration of copyright in a computer program? (2)
- 1.3 Can the Reverse engineering exception (s 15(3A) of the Copyright Act 98 of 1978) apply to computer programs? (2)

[10]

QUESTION 2

Explain the importance of section 21(1)(e) of the Copyright Act 98 of 1978. **[5]**

QUESTION 3

Ringo enters a photographic competition hosted by a well-known wildlife magazine. He is very disappointed when none of his works appear in the August issue of the magazine featuring the best entries. Two months later Ringo is amazed to see one of his photos illustrating a feature article in the magazine's October issue. The photo was, however, changed substantially and his name is not mentioned at all.

Does this constitute moral rights infringement? **[10]**

QUESTION 4

Newspaper A discovers that Newspaper B is using some of their content. Identify three exceptions in section 12 of the Copyright Act 98 of 1978 that Newspaper B can possibly rely on to excuse their infringement of Newspaper A's copyright. **[3]**

QUESTION 5

With regard to literary and musical works, cinematograph films, sound recordings, broadcasts and computer programs, copyright shall not be infringed by any quotation from a work which is lawfully available to the public.

- 5.1 Name the section in the South African Copyright Act that deals with the quotations defence and list the requirements that apply with regard to this defence.
- 5.2 Does your answer in (5.1) above differ from the requirements set out in Article 10(1) and (3) of the Berne Convention?
- 5.3 Why is the Berne Convention and the South African Copyright Act so similar?

[10]

QUESTION 6

What are the requirements for the assignment (transfer) of copyright? **[2]**

QUESTION 7

Name and briefly explain the remedies for copyright infringement. **[10]**

TOTAL: 50 MARKS

ASSIGNMENTS FOR SEMESTER 2

ASSIGNMENT 01: COMPULSORY

CLOSING DATE: 21 August 2017

UNIQUE NUMBER: 750114

Your answers to the assignment questions should **not** exceed three typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

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 hereunder:

Name:

QUESTION 1

James is studying architecture. He is struggling with one of the questions in his *Legal Aspects of Architecture* assignment and decides to phone you for help. As he has little air time left, your answer needs to be brief.

The question is: "Can an architect's work enjoy copyright? And what about the software we use to make our drawings?"

[5]

QUESTION 2

Loeloeraai by the South African writer CJ Langenhoven was first published in 1923. It tells the story of a man from Venus, who visits Oudtshoorn (in the South African Karoo region) in a golden space capsule and then takes four of its inhabitants on a trip to the moon. Langenhoven passed away in 1932. The copyright had therefore lapsed and the work has been in the public domain since 1 January 1983. Suppose that this 14 chapter story was adapted for children's theatre by Lesego in 2003. She passed away in 2005 and her work was performed in public for the first time in 2010.

2.1 Can copyright subsist in Lesego's drama? (15)

2.2 Does Lesego's drama have to adhere to any moral rights of Mr Langenhoven in terms of s 20 of the Copyright Act 98 of 1978? (5)

2.3 When will the copyright in Lesego's drama laps? (5)

[25]

QUESTION 3

Marjorie is a renowned journalist who won several awards for her coverage of “good news” stories in Durban and other parts of South Africa. Marjorie was responsible for many positive articles, which included photographs she had taken.

3.1 Who is the author of the text and the photographs in the newspaper and magazine articles? (4)

3.2 Assume that Marjorie has been a full-time employee of the proprietor of *Sunshine Magazine* for many years.

- (i) Marjorie is approached by *Upbeat Magazine*, who wants to republish his articles that appeared in *Sunshine Magazine*. Who is the owner of the copyright in the articles for purposes of publication in *Upbeat Magazine*? (3)
- (ii) Marjorie is also approached by Buoyant Publishers, who wish to publish a selection of her articles that have appeared in *Sunshine Magazine* in book form. Who is the owner of the copyright in the articles for purposes of publication in book form? (3)

3.3 Assume that Marjorie worked as a freelance journalist, and was commissioned by ABC News Service to report on positive news for payment. Who will be the first owner of the copyright in:

- (i) the text of Margorie’s articles? (3)
- (ii) the photographs? (3)

3.4 Assume that Marjorie is employed as a Professor at a university’s School of Journalism. The series of positive articles was part of a bigger university community engagement project. Who is the first owner of the copyright in the works created by her? (4)

[20]

TOTAL: 50 MARKS

ASSIGNMENT 02

CLOSING DATE: 22 SEPTEMBER 2017

UNIQUE NUMBER: 742880

Your answers to the assignment questions should **not** exceed three typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

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 hereunder:

Name:

Themba, a well known South African singer and song writer, is very upset about a new CD called "Africa sings English". The said CD contains 12 contemporary African language songs that were all translated into English. The translated songs are performed by Mandy M and her band. Track no 2 on the Mandy M CD is a translation of one of Themba's very popular Xhosa songs from his first solo album. Themba confronted Mandy M about her using his song without his permission. She says that her conduct is excused by the "fair dealing" defence to copyright infringement.

1. What types of copyright "work" are embodied in Themba's song? **[6]**

2. For how long will copyright subsist in these works? **[14]**

3. Explain:

(a) whether copyright infringement has taken place (15)

and

(b) if Mandy's excuse is valid. (15)

[30]

TOTAL : 50 MARKS

We hope that you will enjoy this module and we wish you success with your studies.

Kind regards

Prof S Geyer