

# IPSP01X - Essential Copyright Law

Assignment 2 - Unique Number: 773723

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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 hereunder:

– 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 Henry is a junior programmer at XYZ Software.

## 1.1 Who is the author and who is the copyright owner in the programs? [6]

According to [article 10(1)][2] and [article 4][3], computer programs are protected as ‘literary works’ as defined in [article 2][4]. Moreover as per the definition in [section 1][1], Meagan is the author of the work. As Henry’s supervisor she exercised control over the making of the computer program.

Meagan authored the program during the course of her employment by XYZ, it follows by [section 21(d)][1], that XYZ owns the copyright.

## 1.2 What is the duration of copyright in a computer program? [2]

As per [section 3(2)(b)][1], the longer term between fifty years from the end of the year in which the work is either first published or made publicly available with the author’s consent. Or should neither be satisfied then fifty years from the end of the year in which the work is made.

## 1.3 Can the Reverse engineering exception [section 15(3A)][1] apply to computer programs? [2]

No. As per [section 19B(2)(c)][1], copyright will be infringed unless one is in lawful possession of a computer program or authorised copy thereof, moreover one destroys such copies when they cease to be lawful.

# 2 Explain the importance of [section 21(1)(e)][1]. [5]

[section 21(1)(b-d)][1] stipulate ownership of copyright. In particular, should the work have been undertaken during the course of employment or contract or commission or apprenticeship, the ownership of the copyright will vest with the proprietor of the institution (or commissioner) requesting / paying for the work. The importance of the clause, is that the owner of the copyright is subject to the Moral Rights clause [section 20(1)][1], and thus cannot adapt the work in such a way as to bring the original author’s honour or reputation into disrepute. This will amount to infringement of copyright, [section 20(2)][1], and the author can claim ownership of the copyright in question.

# 3 Does this constitute moral rights infringement? [10]

As per [section 1][1] the photo constitutes an artistic work. Moreover as per [section 1(1)(c)][1], the photo appearing in the magazine’s October issue constitutes a adaptation of Ringo’s original work. Ringo is the original author of the photograph, responsible for its original composition; and he is also the first owner of the copyright that subsists in that work [section 21(1)(a)].

By submitting his photograph as an entry in the competition, as per [section 7(a-b)][1], Ringo authorized<sup>2</sup> the magazine to publish and / or reproduce the photograph in their August edition.

However, as per [section 7(e-f)][1], it was unlawful for the magazine to make an adaptation of Ringo’s photo and publish said adaptation without either consent from the copyright owner nor acknowledgement of the original author.

Should Ringo be able to demonstrate that the October edition of the magazine and its depiction of the adapted photograph is prejudicial to his honour or reputation, provided he did not agree to transfer the copyright of the photo when entering the competition, then as per [section 20 (1-2)][1], he can claim authorship of the work, argue that the magazine infringed on his moral rights, that they also infringed on his copyright, and finally he could argue that they be liable for damages and / or royalties.

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<sup>2</sup>Pending further investigation of the competition’s terms and conditions

## 4 Identify three exceptions in [section 12][1] that can possibly excuse copyright infringement. [3]

Newspaper B can argue that they have not infringed on Newspaper A's copyright:

1. As per [section 12(7)][1], provided that the content was a current economic, political or religious topic, Newspaper B did not infringe copyright, as long as they mentioned the source and Newspaper A has not expressly reserved the copyright in that article,
2. As per [section 12(8)(a)], if the content was news of the day that amounts to mere items of press information, then no copyright shall subsist in Newspaper A's content.
3. As per [section 12(3)][1], quotations from articles in newspapers do not infringe copyright provided these quotations constitute *fair use*, and that the original source and authors are mentioned.
4. As per [section 12(1)(b)][1] their use of the content in question constitutes fair dealing and for the purposes of criticism or review of that content or another work, and as per [section 12(c)(i)][1], for the purpose of reporting current events in a newspaper; provided that the original source and author were mentioned,
5. As per [section 12(2)][1], had the content been judicial proceedings, that could argue that their reproduction of the content was to report on judicial proceedings.

## 5 Copyright shall not be infringed by any quotation from a work which is lawfully available to the public. [10]

### 5.1 Name the section and list the requirements that deal with this defence.

Section 12. General exceptions from protection of literary and musical works, subsection 3. As per [section 12(3)][1], for this particular defence it is required that:

- the quotation is compatible with *fair practice* or that it constitutes *fair use*,
- the extent to which the quotation is implemented does not exceed the extent justified by the purpose,
- the source is mentioned in the quotation,
- the name of the author shall be mentioned should it appear on the work.

### 5.2 Does answer in 5.1, differ from requirements set out in [article 10(1),10(3)] [4]?

No, the two legal instruments corroborate one another.

### 5.3 Why are [1] and [4] so similar?

All members of the World Trade Organization are obliged to comply with the substantive provisions in [4]. Moreover South Africa is a Berne Convention member Union country. Naturally it would follow that the Copyright Act of South Africa would therefore at the very least comply with, if not directly resemble the Berne Convention.

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

As per [section 22(1)][1], one can transfer or assign copyright as movable property by assignment, testamentary disposition, or operation of law. However as per [section 22(3)][1], the assignment of copyright shall have effect only if it is in writing and signed by or on behalf of the corresponding assignor.

## 7 Name and briefly explain the remedies for copyright infringements. [10]

As per [section 24(1)][1], at the suit of the owner of a copyright and as per [section 25(1)][1], at the suit of the exclusive (sub-)licensee of the copyright, one may take action against infringements of that copyright, where the plaintiff may be awarded relief by way of:

### 7.1 Damages

As per [section 24(1),(1A),(1B)][1], the plaintiff may be entitled to damages or royalties in lieu of damages, where the court may direct an enquiry to determine a reasonable amount at its discretion. However, should the defendant prove that at the time the copyright infringement occurred, he was neither aware nor had any reasonable grounds to suspect that copyright subsisted in the work, then the plaintiff shall not be entitled to any damages as per [section 24(2)][1].

### 7.2 Interdict

As per [section 24(1)][1], the court may direct the defendant to cease exploitation of the infringing copies.

### 7.3 Delivery of infringing copies

As per [section 24(1)][1], the court may direct the defendant to provide the plaintiff with all infringing copies, all plates used or intended to be used for infringing copies or otherwise.

### 7.4 Fine

As per [section 27(6)(a-b)][1], should a defendant be convicted of infringing the plaintiff's copyright, he'll be liable to a fine and / or imprisonment for each article to which the offence relates:

- a fine not exceeding five thousand rand and / or imprisonment up to three years in the case of a first conviction,
- a fine not exceeding ten thousand rand and / or imprisonment up to five years.

### 7.5 Restriction on the importation of goods

As per [section 28(1)][1] the owner of the copyright in any published work may request the Commissioner for Customs and Excise to treat infringing copies as prohibited goods, provided they were made outside<sup>3</sup> the Republic, [section 28(2)]. As per [section 28(4)][1] the infringer will not be liable for any penalties under the Customs and Excise Act No. 91 of 1964, other than the forfeiture of any *prohibited* goods.

## References

- [1] Copyright Act No. 98, 1978.
- [2] Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994. [Online]. Available: [https://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/trips_e.htm).
- [3] WIPO Copyright Treaty, 1996. [Online]. Available: [http://www.wipo.int/treaties/en/text.jsp?file\\_id=295166](http://www.wipo.int/treaties/en/text.jsp?file_id=295166).
- [4] Berne Convention for the Protection of Literary and Artistic Works, 1886. [Online]. Available: [http://www.wipo.int/treaties/en/text.jsp?file\\_id=283698](http://www.wipo.int/treaties/en/text.jsp?file_id=283698).

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<sup>3</sup>It would constitute an infringing copy had it been made within the Republic.