



# **Tutorial Letter 101/3/2018**

## **INTERNET ASPECTS OF COPYRIGHT AND TRADE MARKS**

**IPSP066**

**Semesters 1 and 2**

**Centre for Business Law**

This tutorial letter contains important information  
about your module.

## 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.

Right from the start we would like to point out that **you must read all the correspondence** you receive during the semester **immediately and carefully**, as it always contains important and, sometimes, urgent information.

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

## 2 TUITION RATIONALE

Internet Aspects of Copyright and Trademarks (IPSP066) is one of the modules offered as part of the Intellectual Property Specialization Programme. 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.

The purpose of this module is to equip you with the basic knowledge and skills to apply the legal principles pertaining to the internet aspects of copyright and trademarks 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 relating to copyright and trademark law to internet situations, understand the basic structure and functioning of copyright and trademark law pertaining to the internet, engage with selected legal texts pertaining to copyright and trademark law regulating internet situations, pass on knowledge obtained through your studies to members of organisations or bodies involved in the practice and administration of legal aspects of transacting on the internet.

## 3 COMMUNICATION WITH YOUR LECTURERS

The lecturers responsible for this module are as follows:

Lecturer's name: Prof CJ Visser  
 Building and office number: Cas van Vuuren Building 6-144  
 e-Mail address: vissecj@unisa.ac.za  
 Telephone number: 012 429-8452  
 (+27 12) 429-8452 (international calls)

Lecturer's name: Professor E Hurter  
 Building and office number: Cas van Vuuren Building 6-136  
 e-Mail address: hurtee1@unisa.ac.za  
 Telephone number: 012 429-8487  
 (+27 12) 429-8487 (international calls)

Letters should be sent to:

The Module leader (IPSP066)  
 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:

Administrator: Ms P Mofokeng / Mr JJ Skhosana / Ms MM Mofolo  
 Building and office number: Cas van Vuuren Building 6-157  
 E-mail address: cbuslaw@unisa.ac.za  
 Telephone number: 012 429-8774 / 4348  
 (+27 12) 429-8774 / 4348 (international calls)

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 Internet Aspects of Copyright and Trademarks consists of the following:

- A study guide
- Tutorial letters
- Legislation and international instruments

## 5.2 Prescribed textbook(s)

There is no prescribed textbook for this module. This means that you do not have to buy any books for this module. **You need only your study guide, cases, legislation and international instruments and the tutorial letters.**

## 5.3 Resources

### 5.3.1 Recommended books

There are no recommended books for this module.

### 5.3.2 Additional books

There are no additional books you should read for this module.

### 5.3.3 Legislation

We will provide you with extracts from legislation and international instruments.

## 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](mailto: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 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: 13 April 2018

Assignment 02: 26 April 2018

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

Assignment 01: 31 August 2018

Assignment 02: 5 October 2018

#### 6.4 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.

#### 6.5 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 your assignment gets lost in the post or 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 2018. If you are registered for the second semester you will write the examination in October/November 2018.

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.

Should the examination dates for two or more of your modules fall on the same day, you must contact the Administrator immediately so that special arrangements can be made for the submission of your answers.

### 7.3 Examination paper

At the end of the semester you will write **one paper** on Internet Aspects of Copyright and Trademarks. The paper counts 100 marks. This will be a 'take home' examination: you will be given the examination paper to answer at home, and then return it to us by fax or e-mail.

For this reason you should make sure that the Administrator always has your current e-mail address.

## 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.
4. **The detailed commentary on each assignment** will be sent to you in a tutorial letter so that you can check your answers by using the commentaries. **Remember**, the assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

## ASSIGNMENTS FOR SEMESTER 1

### ASSIGNMENT 01: COMPULSORY

**CLOSING DATE: 13 April 2018**

**UNIQUE NUMBER: 695242**

Your answers to the assignment questions should **not** exceed two 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

Sibusiso approaches you for legal advice. He tells you that he wants to have his own web site on the Internet, on which he plans to sell sound recordings to students. The site will be hosted by HostNet in South Africa. He seeks your advice on the following issues:

- 1 Sibusiso wants to register the domain name 'united' preferably in one of the generic top-level domains, or, if that is not possible, in one of the country code top-level domains. UNITED is a well-known trademark registered in the United States of America in respect of airlines and courier services.
  - 1.1 Can he register such a domain name?
  - 1.2 Could he be liable for trademark infringement?
  - 1.3 Is there any other procedure that could be instituted to resolve the dispute between Sibusiso and the trademark owners in respect of such registration? What is the basis on which such procedure could be launched?
- 2 Sibusiso wants to place samples from the sound recordings for sale on his web site.
  - 2.1 Which holders of intellectual property rights may be affected by this?
  - 2.2 Which of their rights may be affected?
  - 2.3 Does he need their permission to do so? What form will such permission take?
  - 2.4 If he does not obtain their permission, will HostNet also be legally liable?

## ASSIGNMENT 02

**CLOSING DATE: 26 APRIL 2018**

**UNIQUE NUMBER: 827787**

Your answers to the assignment question should **not** exceed two 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.

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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

Sibusiso wants to add links to other sites hosted on servers in the United States of America on which samples appear from the sound recordings for sale on Sibusiso's web site. He is unsure whether these samples have been made with the consent of the various rights holders.

1. Will he be liable if consent from the rights holders has not been obtained? To whom will he be liable?
2. Where will an infringement action against him be instituted?
3. What law will apply?

## ASSIGNMENTS FOR SEMESTER 2

### ASSIGNMENT 01: COMPULSORY

**CLOSING DATE: 31 August 2018**

**UNIQUE NUMBER: 704677**

Your answers to the assignment questions should **not** exceed two 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.

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

Name:



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- 2 Sibusiso wants to place samples from the sound recordings for sale on his web site.
  - 2.1 Which holders of intellectual property rights may be affected by this?
  - 2.2 Which of their rights may be affected?
  - 2.3 Does he need their permission to do so? What form will such permission take?
- 2.4 If he does not obtain their permission, will HostNet also be legally liable?

## ASSIGNMENT 02

**CLOSING DATE: 5 OCTOBER 2018**

**UNIQUE NUMBER: 733371**

Your answers to the assignment questions should **not** exceed two 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.  
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Name:

## QUESTION

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1. Will he be liable if consent from the rights holders has not been obtained? To whom will he be liable?
2. Where will an infringement action against him be instituted?
3. What law will apply?

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

Kind regards

**PROFESSOR CJ VISSER**  
**PROF E HURTER**