**Feedback on IPSP01X Assignment 2 for the first semester 2017**

The following general guidelines for answering the assignment do not constitute model answers, but are rather an indication of the approach students could have followed in answering such questions. Although these guidelines are based on the South African Act, students certainly receive credit for referring to international law, the law of their own countries, prescribed court cases, and for applying the legal principles to the scenarios.

Unless otherwise indicated, all section numbers in this letter refer to the South African Copyright Act 98 of 1978.

**Feedback on Question 1**

* 1. Meagan is the author. She is the person who exercises control over the making of the computer programmes. (Def of author of a computer programme in s 1 of the Copyright Act.)

XYZ Software is the copyright owner. The general rule is that the author is also the first copyright owner of the work (s 21(1)(a)). However, as the computer programmes are made in the course of the author’s (Meagan’s) employment by XYZ Software, XYZ Software is the copyright owner (s 21(1)(d)).

* 1. 50 years from the end of the year in which the programmes were made available to the public with the consent of the copyright owner. S 3(2)(b).
  2. No. Section 15(3A) only applies to artistic works.

**Feedback on Question 2**

Section 21(1)(e) allows parties to cancel / override the exceptions in s 21(1) (b), (c) and (d). Such an agreement is not an assignment (s 22 deals with assignments) and need not be in writing. An employee, for example, can therefore agree with his employer that he (the employee) will be the owner of the copyright in works created in the course and scope of his employment; the person who commissions photographs can agree with the photographer that he (and not the photographer) will be the owner of the copyright in the photos.

**Feedback on Question 3**

Under South African copyright law the author has two moral rights, which are set out in section 20 of the Copyright Act. These are the right to be recognised as the author of the work (the paternity right), and the right to object to derogatory treatment of the work that would prejudice the author’s honour and reputation (the integrity right). The moral rights belong to the author and it remains with the author even after the work is sold and/or the copyright therein assigned to someone else. Moral rights infringement (under s 20) is a form of copyright infringement.

Ringo may ask the magazine to publish a notice that he is the author of the photograph in question.

Whether Ringo’s integrity right was infringed by the changes would depend on whether these changes prejudiced his honour and reputation.

An interesting example of integrity rights infringement is the Canadian case of *Snow v Eaton Centre Ltd*, where a sculptor was upset when his sculpture of a flock of geese that he sold to a shopping center was decorated with red ribbons for the Christmas season. He felt that the decorations made the naturalistic work look ridiculous, and it was indeed found that the ribbons were prejudicial to his honour and reputation.

**Feedback on Question 4**

Section 12(1)(c) Fair dealing with a work for the purpose of reporting current events.

Section 12(3) Quotations exception.

Section 12(7) "The copyright in an article published in a newspaper or periodical, or in a broadcast, on any current economic, political or religious topic shall not be infringed by reproducing it in the press or broadcasting it, if such reproduction or broadcast has not been expressly reserved and the source is clearly mentioned."

**Feedback on Question 5**

1. Section 12(3)

The work that is quoted from must be lawfully available to the public.

The source must be mentioned.

The name of the author (if it appears on the work) must be mentioned.

The quotation must be compatible with fair practice and

may only be used to the extent justified by the purpose.

(b) No

(c) As South Africa is a signatory of the Berne Convention, the South African Act needs to be aligned with the Convention.

**Feedback on Question 6**

It must be in writing and signed by the assignor.

**Feedback on Question 7**

* An interdict (injunction)
* Damages
* Delivery up
* In lieu of damages, a reasonable royalty
* Additional damages.

Please see Study Unit 7 for more detail about the said remedies.