

Amendment of section 46 of Act 57 of 1978, as amended by section 5 of Act 67 of 1983

41. Section 46 of the Patents Act, 1978, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The duration of a patent shall, unless otherwise provided in this Act, be 20 years from the date of application therefor, subject to payment of the prescribed renewal fees by the patentee concerned or an agent.”

Amendment of section 49 of Act 57 of 1978

42. Section 49 of the Patents Act, 1978, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) Where any dispute arises between joint patentees as to their respective rights in or to a patent, the institution of proceedings relating to the patent or the manner in which they should deal with the patent or the patented invention, any joint patentee may apply to the commissioner to decide the matter in dispute.”

Amendment of section 51 of Act 57 of 1978, as amended by section 7 of Act 67 of 1983 and section 3 of Act 44 of 1986

43. Section 51 of the Patents Act, 1978, is hereby amended by the substitution for the proviso to subsection (8) of the following proviso:

“Provided that in determining the validity of the patent under this Act, regard shall be had to the priority date of the new matter introduced by way of the supplementary disclosure.”

Amendment of section 55 of Act 57 of 1978

44. Section 55 of the Patents Act, 1978, is hereby amended by the addition of the following proviso:

“Provided that the commissioner shall not grant such a licence unless—

- (a) the invention claimed in the dependent patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the prior patent;
- (b) the proprietor of the dependent patent granted the proprietor of the prior patent on reasonable terms a cross-licence to use the invention claimed in the dependent patent; and
- (c) the use authorised in respect of the prior patent is not assignable except with the assignment of the dependent patent.”

Amendment of section 56 of Act 57 of 1978, as amended by section 2 of Act 76 of 1988

45. Section 56 of the Patents Act, 1978, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any interested person who can show that the rights in a patent are being abused may apply to the [registrar] commissioner in the prescribed manner for a compulsory licence under the patent.”;

(b) by the deletion of subsection (1A) and paragraph (b) of subsection (2);

(c) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) The commissioner shall consider the application on its merits and may order the grant to the applicant of a licence on such conditions as he or she may deem fit, including a condition precluding the licensee from importing into the Republic any patented articles.”;

(d) by the addition of the following paragraph to subsection (4):

“(c) A licence granted under this section shall include a provision that, subject to adequate protection of the legitimate interests of the licensee,

the licence shall, on application by the patentee, be terminated if the circumstances which led to its grant cease to exist and, in the opinion of the commissioner, are unlikely to recur.”;

(e) by the substitution for subsection (5) of the following subsection:

“(5) [If the only abuse found by the commissioner to have been established is that set out in subsection (2)(a), any] Any licence granted under this section shall be non-exclusive [but] and shall not be transferable except to a person to whom the business or part of the business in connection with which the rights under the licence were exercised has been transferred.”;

(f) by the deletion of subsection (6);

(g) by the substitution for subsection (10) of the following subsection:

“(10) Subject [to the provisions of subsection (11) and] to the conditions that may be attached to the licence, a licensee under this section shall have the same rights and obligations as any other licensee under a patent.”; and

(h) by the deletion of subsections (11) and (12).

Amendment of section 65 of Act 57 of 1978, as amended by section 3 of Act 76 of 1988

46. Section 65 of the Patents Act, 1978, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) In lieu of damages the plaintiff may, at his or her option, be awarded an amount calculated on the basis of a reasonable royalty which would have been payable by a licensee or sub-licensee in respect of the patent concerned.”.

Amendment of section 91 of Act 57 of 1978

47. Section 91 of the Patents Act, 1978, is hereby amended by the substitution for the words following paragraph (g) of the following words:

“generally, as to any matter which he or she considers [it] necessary or expedient to prescribe in order to carry out, or give effect to, the Patent Cooperation Treaty or that the purposes of this Act may be achieved.”.

Substitution of certain expression in Act 57 of 1978

48. The Patents Act, 1978, is hereby amended by the substitution for the expression “South African Institute of Patent Agents”, wherever it occurs, of the expression “South African Institute of Intellectual Property Law”.

Substitution of long title of Act 57 of 1978

49. The following long title is hereby substituted for the long title of the Patents Act, 1978:

“ACT

To provide for the registration and granting of patents for inventions and for matters connected therewith.”.

Amendment of section 1 of Act 98 of 1978, as amended by section 1 of Act 56 of 1980, section 1 of Act 66 of 1983, section 1 of Act 52 of 1984, section 1 of Act 13 of 1988 and section 1 of Act 125 of 1992

50. Section 1(1) of the Copyright Act, 1978, is hereby amended—

(a) by the substitution for the definition of “broadcast” of the following definition:

“ ‘broadcast’, when used as a noun, means a telecommunication service of transmissions consisting of sounds, images, signs or signals which—

(a) takes place by means of electromagnetic waves of frequencies of lower than 3 000 GHz transmitted in space without an artificial conductor; and

- (b) is intended for reception by the public or sections of the public, and includes the emitting of programme-carrying signals to a satellite, and, when used as a verb, shall be construed accordingly;”
- (b) by the substitution for the definition of “broadcaster” of the following definition: 5
“ ‘broadcaster’ means a person who undertakes a broadcast;”;
- (c) by the substitution for the definition of “cinematograph film” of the following definition: 10
“ ‘cinematograph film’ means [the] any fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of images capable, when used in conjunction with any other mechanical, electronic or other device, of being seen as a moving picture and of reproduction, and includes the sounds embodied in a sound-track associated with the film, but shall not include a computer program;”;
- (d) by the deletion of the definition of “Corporation”; 15
- (e) by the substitution for paragraph (g) of the definition of “literary work” of the following paragraph: 20
“(g) tables and compilations, including tables and compilations of data stored or embodied in a computer or a medium used in conjunction with a computer;”;
- (f) by the substitution for the definition of “rebroadcasting” of the following definition: 25
“ ‘rebroadcasting’ means the simultaneous or subsequent broadcasting by one [broadcasting organization] broadcaster of the broadcast of another [broadcasting organization] broadcaster;”;
- (g) by the substitution for the definition of “record” of the following definition: 30
“ ‘record’ means any disc, tape, perforated role or other device in or on which sounds, or data or signals representing sounds, are embodied or represented so as to be capable of being automatically reproduced [therefrom] or performed therefrom;”;
- (h) by the substitution for the definition of “sound recording” of the following definition: 35
“ ‘sound recording’ means any fixation or storage of sounds, or data or signals representing sounds, capable of being reproduced, but does not include a sound-track associated with a cinematograph film;”.

Amendment of section 2 of Act 98 of 1978, as amended by section 2 of Act 56 of 1980, section 2 of Act 52 of 1984 and section 2 of Act 125 of 1992

51. Section 2 of the Copyright Act, 1978, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A work, except a broadcast or programme-carrying signal, shall not be eligible for copyright unless the work has been written down, recorded, represented in digital data or signals or otherwise reduced to a material form.”

Amendment of section 3 of Act 98 of 1978, as amended by section 3 of Act 52 of 1984 and section 3 of Act 125 of 1992

52. Section 3(2) of the Copyright Act, 1978, is hereby amended by the substitution for paragraph (b) of the following paragraph: 45

“(b) cinematograph films, photographs and computer programs, fifty years from the end of the year in which the work—

(i) is made available to the public with the consent of the owner of the copyright; or 50

(ii) is first published, whichever term is the longer, or failing such an event within fifty years [from] of the making of the work, fifty years from the end of the year in which the work is made;”.

Substitution of section 11B of Act 98 of 1978, as inserted by section 10 of Act 125 of 1992

53. The following section is hereby substituted for section 11B of the Copyright Act, 1978:

“Nature of copyright in computer programs 5

- 11B. Copyright in a computer program vests the exclusive right to do or authorize the doing of any of the following acts in the Republic:**
- (a) Reproducing the computer program in any manner or form;
 - (b) publishing the computer program if it was hitherto unpublished;
 - (c) performing the computer program in public;
 - (d) broadcasting the computer program;
 - (e) causing the computer program to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the computer program, and is operated by the original broadcaster;
 - (f) making an adaptation of the computer program;
 - (g) doing, in relation to an adaptation of the computer program, any of the acts specified in relation to the computer program in paragraphs (a) to (e) inclusive;
 - (h) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the computer program.”. 20

Amendment of section 12 of Act 98 of 1978, as amended by section 11 of Act 125 of 1992

54. Section 12 of the Copyright Act, 1978, is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5)(a) The copyright in a literary or musical work shall not be infringed by the reproduction of such work by [the Corporation] a broadcaster by means of its own facilities where such reproduction or any copy thereof is intended exclusively for lawful broadcasts of the [Corporation] broadcaster and is destroyed before the expiration of a period of six months immediately following the making of the reproduction, or such longer period as may be agreed to by the owner of the relevant part of the copyright in the work. 30
- (b) Any reproduction of a work made under paragraph (a) may, if it is of an exceptional documentary nature, be preserved in the archives of the [Corporation] broadcaster, but shall, subject to the provisions of this Act, not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work.”. 35

Amendment of section 24 of Act 98 of 1978, as amended by section 21 of Act 125 of 1992

55. Section 24 of the Copyright Act, 1978, is hereby amended by the substitution for subsections (1A), (1B) and (1C) of the following subsections, respectively: 40

- “(1A) In lieu of damages the plaintiff may, at his or her option, be awarded an amount calculated on the basis of a reasonable royalty which would have been payable by a licensee in respect of the work or type of work concerned. 45
- (1B) For the purposes of determining the amount of damages or a reasonable royalty to be awarded under this section or section 25(2), the court may direct an enquiry to be held and may prescribe such procedures for conducting such enquiry as the court considers necessary. 45
- (1C) Before the owner of copyright institutes proceedings under this section, he or she shall give notice in writing to the exclusive licensee or sub-licensee of the copyright concerned of the intention to do so, and the exclusive licensee or sub-licensee may intervene in such proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.”. 50