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The Anton Mostert

CIP

Chair of Intellectual Property

Copyright Amendment Bill

*Portfolio Committee on Trade and Industry:
Public hearing*

Prof Sadulla Karjiker

Anton Mostert Chair of Intellectual Property Law
Faculty of Law, Stellenbosch University



WHAT IS COPYRIGHT LAW?



Copyright is the exclusive right in relation to a work embodying intellectual property (i.e. the product of the intellect) to do, or to authorise others to do, certain acts in relation to that work, which acts represent in the case of each type of work the manners in which that work can be exploited for personal gain or profit

Dean & Karjiker: *Handbook of South African Copyright Law p 1 – 1*
Published by Juta & Co.

RATIONALE FOR COPYRIGHT



- Justification
 - Intangible, public goods (nonexcludable and nonrival)
 - Free riding
 - Market failure
 - Proprietary rights
 - Incentive
 - Production and distribution costs

COPYRIGHT LAW 101



- Easy stuff
 - Author
 - Owner

RESALE ROYALTY RIGHT



- Title
 - “Resale of royalty right”
- Section 9B(1)
 - “The author of an artistic work shall enjoy an inalienable right to receive royalties on the commercial resale of his or her work subsequent to the first transfer by **the user** of that work...”

RESALE ROYALTY RIGHT (cont)



- Section 9B(3)
 - “The user, performer, owner, producer or author of an artistic work shall be entitled to receive a resale royalty if...”
- Section 9F(2)
 - “In the case of a bequest of an artistic work by an **author who did not transfer authorship** of that work in his or her lifetime...”

RESALE ROYALTY RIGHT (cont)



- Section 9B(1)
 - “original” artworks
- Section 9B
 - Professional art market (cf “commercial”)
 - Threshold amount
 - Extraterritorial effect
- Section 9C(2)
 - Artist “linked with” work (joint authorship?)
- Section 9F
 - Only testamentary dispositions

EROSION OF PROPERTY RIGHTS



- Section 13B
 - Education
 - Academic publications
 - No free lunch

COMPULSORY LICENCES



- Copyright Tribunal can grant compulsory licence
 - Refusal of rights holder to grant licence in terms of licensing scheme
 - Licence unreasonably refused by copyright holder.
- Royalty payable

OTHER NOTEWORTHY CONCERNS



- Intellectual Property Laws Amendment Act 28 of 2013
- Performers' Protection Act 11 of 1967
- Database protection (s 2A(2))
 - Originality – “author’s own intellectual creation”
- Works “funded” by the state (s 5)
- Needletime royalties (s 9A)
 - Change to a property rule

OTHER NOTEWORTHY CONCERNS



- Section 20
 - Author entitled to enforce copyright
- Section 22
 - Oral v Written licences
- Section 23
 - Confusion and omissions

Thank you

QUESTIONS?

Prof Sadulla Karjiker
Stellenbosch University
skarjiker@sun.ac.za
www.sun.ac.za/iplaw

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