

REPUBLIC OF SOUTH AFRICA

**COPYRIGHT AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75) and redrafted by  
the Portfolio Committee on Trade and Industry; explanatory summary of Bill  
published in Government Gazette No. 40121 of 5 July 2016)*

*(The English text is the official text of the Bill.)*

(MINISTER OF TRADE AND INDUSTRY)

[B 13—2017]

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**GENERAL EXPLANATORY NOTE:**

[            ]      Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_      Words underlined with a solid line indicate insertions in existing enactments.

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**BILL**

To amend the Copyright Act, 1978, so as to define certain words and expressions; to allow for further limitations and exceptions regarding the reproduction of copyright works; to provide for the sharing of royalties in copyright works; to provide for the ~~protection of copyright~~ payment of royalties in respect of **literary, musical, artistic and audiovisual** works; to **provide for resale royalty rights; to provide for recordal and reporting of certain acts;** to provide for the accreditation of Collecting Societies; to provide **a mechanism for the procedure for** settlement of **royalty** disputes; ~~to allow fair use of copyright work;~~ to provide for access to copyright works by persons with disabilities; to provide for the licensing ~~protection of ownership in respect of~~ orphan works; to strengthen the powers and functions of the Copyright Tribunal; to provide for prohibited conduct in respect of technological protection measures; to provide for prohibited conduct in respect of copyright management information; to provide for ~~management~~ protection of digital rights; to provide for certain new offences; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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, section 1 of Act 125 of 1992, section 50 of Act 38 of 1997, section 1 of Act 9 of 2002, section 224 of Act 71 of 2008 and section 3 of Act 28 of 2013

1. Section 1 of the Copyright Act, 1978 (hereinafter referred to as “the principal Act”), is hereby amended—

- (a) by the insertion before the definition of “adaptation” of the following definition:

“ ‘accessible format copy’ means a copy of a work in an alternative manner or form which gives a person with a disability access to the work and which permits such person to have access as feasibly and comfortably as a person without disability;”;

- (b) by the insertion after the definition of “artistic work” of the following definitions:

“ ‘art market professional’ includes—

- (a) an auctioneer or auction house;
- (b) the owner or operator of an art gallery;
- (c) the owner or operator of a museum;
- (d) an art dealer; or
- (e) a person otherwise involved in the business of dealing in artworks;

‘audiovisual work’ means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which either can be perceived, reproduced or communicated through a device, and includes a cinematographic film;”;

- (c) by the substitution for the definition of “collecting society” of the following definition:

“ ‘collecting society’ means a non-profit company contemplated in the Companies Act, 2008 (Act No. 71 of 2008)—

- (a) that is owned by holders of rights in terms of this Act or the Performers’ Protection Act, 1967 (Act No. 11 of 1967);
- (b) whose only members are holders of rights in terms of this Act or the Performers’ Protection Act, 1967 (Act No. 11 of 1967);
- (c) to whom members have granted mandates to license, manage or otherwise represent copyright or ~~neighbouring~~ the rights of performers, on behalf of and for the benefit of those members or exercise any of the actions contemplated in section 22C(2); and
- (d) whose primary purpose is executing the mandates contemplated

(eB) making the work available to the public by wire or wireless means, so that any member of the public may access the work from a place and at a time chosen by that person;

(eC) distributing the original or a copy of the work to the public;”; and

(b) by the substitution for paragraph (g) of the following paragraph:

“(g) doing, in relation to an adaptation of the work, any of the acts specified [in relation to the work] in paragraphs (a) to [(e)] (eC) inclusive.”.

#### **Insertion of section 6A in Act 98 of 1978**

5. The following section is hereby inserted in the principal Act after section 6:

##### **“Share in royalties regarding literary or musical works**

6A. (1) For the purposes of this section, ‘royalty’ means the gross profit made on the exploitation of a literary work or musical work by a copyright owner or a person who has been authorized by the author to do any of the acts contemplated in section 6.

(2) Notwithstanding—

(a) the assignment of copyright in a literary or musical work; or

(b) the authorization by the author of a literary or musical work of the right to do any of the acts contemplated in section 6,

the author shall, ~~have the right to~~ subject to any agreement to the contrary, be entitled to receive a fair share ~~in~~ of the royalty received for the execution of any of the acts contemplated in section 6.

(3) (a) The author’s share of the royalty contemplated in subsection (2) shall be determined by a written agreement in the prescribed manner and form, between the author and the copyright owner, or between the author and the person contemplated in subsection (2)(b), or between their **representative** **respective** collecting societies.

(b) Any assignment of the copyright in that work, by the copyright owner, or subsequent copyright owners, is subject to the agreement between the author and the copyright owner, contemplated in paragraph (a), or the order contemplated in subsection (4).

(4) Where the author and copyright owner, or the person contemplated in subsection (2)(b), cannot agree on the author’s share of the royalty, any party may

refer the matter to the Tribunal for an order determining the author's share of the royalty.

(5) The agreement contemplated in subsection (3)(a) must include the following:

(a) The rights and obligations of the author and the copyright owner or the person authorized by the author to use the work as contemplated in subsection (2)(b);

(b) the author's share of the royalty agreed on, or ordered by the Tribunal, as the case may be;

(c) the method and period within which the amount must be paid to the author by the copyright owner, or the person authorized to use the work as contemplated in subsection (2)(b), to the author; and

(d) a dispute resolution mechanism.

(6) This section does not apply to—

(a) a copyright owner who ~~commissioned, or who~~ is the author of, the literary or musical work in question;

(b) a work created in the course of employment contemplated in section 21(1)(b) and (d); or

(c) a work where copyright is conferred by section 5 in the state, local or international organizations.

(7) (a) This section applies to a literary or musical work where copyright in that work was assigned before the commencement date of the Copyright Amendment Act, 2019, if that literary or musical work—

(i) falls within the application of this Act; and

(ii) is still exploited for profit.

(b) The Minister must prescribe the process to give effect to the application of this section to a work contemplated in paragraph (a).

(c) The share in the royalty only applies to royalties received, in respect of a work contemplated in paragraph (a), after the commencement date of the Copyright Amendment Act, 2019.''

**Amendment of section 7 of Act 98 of 1978, as amended by section 4 of Act 56 of 1980 and section 7 of Act 125 of 1992**

6. Section 7 of the principal Act is hereby amended—

(a) by the insertion after paragraph (d) of the following paragraphs:

“(dA) communicating the work to the public by wire or wireless means;

(dB) making the work available to the public by wire or wireless means, so that any member of the public may access the work from a place and at a time chosen by that person;

(dC) distributing the original or a copy of the work to the public;”; and

(b) by the substitution for paragraph (f) of the following paragraph:

“(f) doing, in relation to an adaptation of the work, any of the acts specified [in relation to the work] in paragraphs (a) to [(d)] (dC) inclusive.”.

**Insertion of section 7A, 7B, 7C, 7D, 7E and 7F in Act 98 of 1978**

7. The following sections are hereby inserted in the principal Act after section 7:

**“Share in royalties regarding visual artistic works**

7A. (1) For the purposes of this section, ‘royalty’ means the gross profit made on the exploitation of a visual artistic work by a copyright owner or a person who has been authorized by the author to do any of the acts contemplated in section 7, but does not include profit made on the commercial resale of a visual artistic work contemplated in section 7B.

(2) Notwithstanding—

(a) the assignment of the copyright in a visual artistic work; or

(b) the authorization by the author of a visual artistic work of the right to do any of the acts contemplated in section 7,

the author shall have the right to share in the royalty received for the execution of any of the acts contemplated in section 7.

(3) (a) The author’s share of the royalty contemplated in subsection (2) shall be determined by a written agreement in the prescribed manner and form, between the author and the copyright owner, or the person contemplated in subsection (2)(b), or between their **representative** **respective** collecting societies.

(b) Any assignment of the copyright in that work, by the copyright owner, or subsequent copyright owners, is subject to the agreement between the

(5) — A resale royalty right applies whether or not the author was the first owner of any copyright in the work.

### **Proof of author**

7C. (1) Where a mark or name purporting to identify a person as the author of a visual artistic work appears on such work, that person is, in the absence of evidence to the contrary, presumed to be the author of such work.

(2) If a visual artistic work—

(a) is a work of more than one author, the presumption in subsection (1) applies to each co-author of such visual artistic work; or

(b) includes indigenous cultural expressions or knowledge, the relevant indigenous community is entitled to an equitable share in the resale royalty payable.

### **Duration of resale royalty right**

7D. (1) The resale royalty right of an author of a visual artistic work or his or her heirs, as may be applicable, expires at the end of the period of 50 years calculated from the end of the calendar year—

(a) in which the author concerned died; or

(b) in the case of more than one author, in which the last of the known authors died.

(2) In the case of a visual artistic work created by an unknown author—

(a) the resale royalty right in that work expires at the end of the period of 50 years calculated from the end of the calendar year in which the work was first made available to the public; or

(b) where the identity of the author becomes known at a later stage, the resale royalty right of that author expires in accordance with the period contemplated in subsection (1).

### **Transmission of resale royalty right**

7E. (1) A resale royalty right may not be alienated, save for transmission on the death of the holder of the right by testamentary disposition; or by operation of law.

- (dB) making the work available to the public by wire or wireless means, so that any member of the public may access the work from a place and at a time chosen by that person;
- (dC) distributing the original or a copy of the work to the public;
- (dD) authorising commercial rental of the original or copy of the work to the public;
- (e) making an adaptation of the [film] work;
- (f) doing, in relation to an adaptation of the [film] work, any of the acts specified in relation to the [film] work in paragraphs (a) to [(d)] (dD) inclusive;
- (g) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the [film] work.”.

#### **Insertion of section 8A in Act 98 of 1978**

9. The following section is hereby inserted in the principal Act after section 8:

#### **Share in royalties regarding audiovisual works**

8A. (1) A performer shall, subject to the Performers Protection Act, 1967 (Act No. 11 1967), have the right to share in the royalty received by the copyright owner for any of the acts contemplated in section 8.

(2) (a) The performer’s share of the royalty contemplated in subsection (1) shall be determined by a written agreement in the prescribed manner and form, between the performer and the copyright owner or between their representative respective collecting societies.

(b) Any assignment of the copyright in that work by the copyright owner, or subsequent copyright owners, is subject to the agreement between the performer and the copyright owner, contemplated in paragraph (a), or the order contemplated in subsection (4), as the case may be.

(3) Where the performer and copyright owner contemplated in subsection (2)(a) cannot agree on the performer’s share of the royalty, the performer or copyright owner may refer the matter to the Tribunal for an order determining the performer’s share of the royalty.

(4) The agreement contemplated in subsection (2)(a) must include the



following:

- (a) The rights and obligations of the performer and the copyright owner;
  - (b) the performer's share of the royalty agreed on, or ordered by the Tribunal, as the case may be;
  - (c) the method and period within which the amount must be paid by the copyright owner to the performer; and
  - (d) a dispute resolution mechanism.
- (5) (a) This section applies to an audiovisual work where copyright in that work was assigned before the commencement date of the Copyright Amendment Act, 2019, if that audiovisual work—
- (i) falls within the application of this Act; and
  - (ii) is still exploited for profit.
- (b) The Minister must prescribe the process to give effect to the application of this section to a work contemplated in paragraph (a).
- (c) The share in the royalty only applies to royalties received, in respect of a work contemplated in paragraph (a), after the commencement date of the Copyright Amendment Act, 2019.
- (6) Any person who executes an act contemplated in section 8 for commercial purposes must—
- (a) register that act in the prescribed manner and form; and
  - (b) submit a complete, true and accurate report to the performer, copyright owner, the indigenous community or collecting society, as the case may be, in the prescribed manner, ~~for the purpose of calculating the royalties due and payable by that person to allow the collecting society to fulfil its mandate.~~
- (7) (a) Any person who intentionally fails to register an act as contemplated in subsection (6)(a), or who intentionally fails to submit a report as contemplated in subsection (6)(b), shall be guilty of an offence.
- (b) A person convicted of an offence under paragraph (a) shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, or if the convicted person is not a natural

person, to a fine of a minimum of ten per cent of its annual turnover.

*(c)* For the purpose of paragraph (b), the annual turnover of a convicted person that is not a natural person at the time the fine is assessed is the total income of that person during the financial year during which the offence or the majority of offences were committed, and if that financial year has not yet been completed, the financial year immediately preceding the offence or the majority of offences, under all transactions to which this Act applies.

*(d)* If the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the minimum sentence prescribed in paragraph (b), it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.”.

**Amendment of section 9 of Act 98 of 1978, as substituted by section 2 of Act 9 of 2002**

10. Section 9 of the principal Act is hereby amended—

*(a)* by the substitution for paragraph *(e)* of the following paragraph:

“(e) communicating the sound recording to the public by wire or wireless means[.]”; and

*(b)* by the addition after paragraph *(e)* of the following paragraphs:

“(f) making the sound recording available to the public by wire or wireless means, so that any member of the public may access the sound recording from a place and at a time chosen by that person.

*(g)* distributing the original or a copy of the work to the public;

*(h)* authorising commercial rental of the original or copy of the work to the public;”.

**Substitution of section 9A of Act 98 of 1978, as inserted by section 3 of Act 9 of 2002**

11. The following section is hereby substituted for section 9A of the principal Act:

**“Royalties regarding sound recordings**

9A. (1) *(a)* In the absence of an agreement to the contrary ~~or unless otherwise authorized by law~~, no person may, without payment of a royalty to the owner of the relevant copyright—

- (i) broadcast[,] a sound recording as contemplated in section 9(c);
  - (ii) cause the transmission of a sound recording as contemplated in section 9(d); ~~for~~ **[play]**
  - (iii) communicate a sound recording to the public as contemplated in [section 9(c), (d) or (e) without payment of a royalty to the owner of the relevant copyright] section 9(e); ~~or~~.
  - ~~(iv) make the sound recording available to the public as contemplated in section 9(f).~~
- (aA) Any person who executes an act contemplated in section 9(c), (d), (e), ~~or (f) or (g) for commercial purposes must—~~
- (i) register that act in the prescribed manner and form; and
  - (ii) submit a complete, true and accurate report to the performer, copyright owner, the indigenous community or collecting society, as the case may be, in the prescribed manner, ~~for the purpose of calculating the royalties due and payable by that person to allow the collecting society to fulfil its mandate.~~
- (b) The amount of any royalty contemplated in paragraph (a) shall be determined by an agreement between the user of the sound recording, the performer and the owner of the copyright, the indigenous community, or [between] their [representative] respective collecting societies.
- (c) In the absence of an agreement contemplated in paragraph (b), the user, performer or owner may in the prescribed manner refer the matter to the **[Copyright] Tribunal [referred to in section 29(1)]** or they may agree to refer the matter for arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).
- (2)(a) The owner of the copyright, collecting society or indigenous community who receives payment of a royalty in terms of this section shall ensure that [share] such royalty is equally shared, subject to an agreement to the contrary, between the copyright owner and [with] any performer whose performance is featured on the sound recording in question and

majority of offences, were committed, and if that financial year has not yet been completed, the financial year immediately preceding the offence or the majority of offences, under all transactions to which this Act applies.

(d) If the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the minimum sentence prescribed in paragraph (b), it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.”.

### **Repeal of section 12 of Act 98 of 1978**

12. Section 12 of the principal Act is hereby repealed.

### **Insertion of sections 12A, 12B, 12C and 12D in Act 98 of 1978**

13. The following sections are hereby inserted in the principal Act after section 12:

#### **“General exceptions from copyright protection**

12A. (1)—(a) In addition to uses specifically authorized, fair use in respect of a work or the performance of that work, for purposes such as the following, does not infringe copyright in that work:

- (i) Research, private study or personal use, including the use of a lawful copy of the work at a different time or with a different device;
- (ii) criticism or review of that work or of another work;
- (iii) reporting current events;
- (iv) scholarship, teaching and education;
- (v) comment, illustration, parody, satire, caricature, cartoon, tribute, homage or pastiche;
- (vi) preservation of and access to the collections of libraries, archives and museums; and
- (vii) ensuring proper performance of public administration.

(b) In determining whether an act done in relation to a work constitutes fair use, all relevant factors shall be taken into account, including but not limited to—

- (i) the nature of the work in question;
  - (ii) the amount and substantiality of the part of the work affected by the act in relation to the whole of the work;
  - (iii) the purpose and character of the use, including whether—
    - (aa) such use serves a purpose different from that of the work affected; and
    - (bb) it is of a commercial nature or for non-profit research, library or educational purposes; and
  - (iv) the substitution effect of the act upon the potential market for the work in question.
- (c) For the purposes of paragraphs (a) and (b) and to the extent reasonably practicable and appropriate, the source and the name of the author shall be mentioned.

#### **Specific exceptions from copyright protection applicable to all works**

**12B. (1)** Copyright in a work shall not be infringed by any of the following acts:

- (a) Any quotation: Provided that—
  - (i) the extent thereof shall not exceed the extent reasonably justified by the purpose; and
  - (ii) to the extent that it is practicable, the source and the name of the author, if it appears on or in the work, shall be mentioned in the quotation;
- (b) any illustration in a publication, broadcast, sound or visual record for the purpose of teaching: Provided that such use shall not exceed the extent justified by the purpose: Provided further that, to the extent that it is practicable, the source and the name of the author, if it appears on or in the work, shall be mentioned in the act of teaching or in the illustration in question;
- (c) the reproduction of such work by a broadcaster by means of its own facilities where such reproduction or any copy of the reproduction is intended exclusively for lawful broadcasts of the broadcaster and is

- (i) such translation is not done for commercial purposes;
  - (ii) such translation is used for personal, educational, teaching, judicial proceedings, research and professional advice purposes only: **Provided that such use shall not exceed the extent justified by the purpose;** or
  - (iii) such work is translated and communicated to the public for non-commercial purposes;
- (g) the use of such work in a *bona fide* demonstration of electronic equipment to a client by a dealer in such equipment;
  - (h) the use of such work is for the purposes of judicial proceedings or preparing a report of judicial proceedings; and
  - (i) the making of a personal copy of such work by an individual for the individual's personal use and made for ends which are not commercial: **Provided that such use shall not exceed the extent justified by the purpose.**
- (2) For the purposes of subsection (1)(i), permitted personal uses include—
- (a) the making of a back-up copy;
  - (b) time or format-shifting; or
  - (c) the making of a copy for the purposes of storage, which storage may include storage in an electronic storage medium or facility accessed by the individual who stored the copy or the person responsible for the storage medium or facility.
- (3) The provisions of subsection (1) shall also apply with reference to the making or use of an adaptation of a work and shall also include the right to use the work either in its original language or in a different language.
- (4) An authorization to use a literary work as the basis for the making of an audiovisual work, or as a contribution of the literary work to such making, shall, in the absence of an agreement to the contrary, include the right to broadcast such audiovisual work.
- (5) The provisions of subsection (1)(d) and (e) shall apply also with reference to a work or an adaptation thereof which is transmitted in a diffusion service.

needed to make the work accessible to a person with a disability; and

(c) the activity under this subsection must be undertaken on a non-profit basis.

(2)(a) A person with a disability, or ~~an organization~~ a person that serves persons with disabilities, to whom the work is communicated by wire or wireless means as a result of an activity under subsection (1) may, without the authorization of the owner of the copyright work, reproduce the work for personal use.

(b) The provisions of paragraph (a) are without prejudice to any other limitations or exceptions that the person referred to in that paragraph may enjoy.

(3) A person with a disability or ~~an organization~~ a person that serves persons with disabilities may, without the authorization of the copyright owner export to or import from another country any legal copy of an accessible format copy of a work referred to in subsection (1), as long as such activity is undertaken on a non-profit basis by that person ~~or an organization~~.

(4) The exception created by this section is subject to the obligation of indicating the source and the name of the author on any accessible format copy in so far as it is practicable.”.

**Amendment of section 20 of Act 98 of 1978, as substituted by section 19 of Act 125 of 1992**

21. Section 20 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Notwithstanding the **[transfer]** assignment of the copyright in a **[literary, musical or artistic work, in a cinematograph film or in a computer program]** work, the author shall have the right to claim authorship of the work, subject to the provisions of this Act, and to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author: Provided that an author who authorizes the use of his or her work in a sound recording or [cinematograph film or a television broadcast] audiovisual work or an author of a computer program or a work associated with a computer program may not prevent or object to modifications that are absolutely

(5) An accreditation certificate issued in terms of this section is valid for a period not exceeding five years and, unless it is suspended or cancelled, may be renewed in the prescribed manner on such terms and conditions as may be determined by the Commission.

(6) If there is no collecting society for a right, the Commission may provide such assistance as may be necessary to assist in the formation of a collecting society.

(7) (a) Any person who at the commencement of the Copyright Amendment Act, 2019, is acting as a representative collecting society in terms of this Chapter must, within 18 months of the commencement of the Copyright Amendment Act, 2019, apply to the Commission in the prescribed manner and form for accreditation.

(b) The person contemplated in paragraph (a) may continue to act as a representative collecting society pending such accreditation subject to any—

(i) conditions that the Commission may instruct it in writing to comply with; and

(ii) finding of the Commission related to such application for accreditation.

(8) (a) Subject to subsection (7), any person who intentionally gives him or herself out as a representative collecting society in terms of this Chapter without having been accredited, commits an offence.

(b) A person convicted of an offence in terms of paragraph (a), is liable on conviction to a fine or imprisonment for a period not exceeding five years.

#### **Administration of rights by collecting society**

**22C. (1)** Subject to such terms and conditions as may be prescribed—

(a) a collecting society or indigenous community may accept from an author, performer, copyright owner or indigenous community or another collecting society of rights, exclusive authorization to administer any right in any work by the issuing of licences or the collecting of licence fees and royalties, or both; and

(b) an author, performer, copyright owner or indigenous community or



other collecting society of rights may withdraw such authorization without prejudice to the right of the collecting society or indigenous community concerned.

(2) Subject to such conditions as may be prescribed, a collecting society may—

- (a) issue a licence in respect of any rights under this Act;
- (b) require any person who executes an act contemplated in sections 6, 7, 7B, 8 or 9 for commercial purposes to provide a complete, true and accurate report to the collecting society in the prescribed manner, ~~for the purpose of calculating the royalties due and payable by that person to allow the collecting society to fulfil its mandate;~~
- (c) collect licensing fees and royalties in pursuance of such a licence;
- (d) distribute such collected royalties among authors, performers or copyright owners, collecting societies of rights or indigenous communities after deducting a prescribed amount from the collected royalties for its own expenses;
- (e) negotiate licensing fees, royalty rates and tariffs; and
- (f) perform any other prescribed function.

(3) A collecting society may—

- (a) enter into an agreement with any foreign society or foreign organization administering rights corresponding to rights that it administers under this Act;
- (b) entrust rights administered by it in the Republic to such foreign society or foreign organization to administer in that country: Provided that no such collecting society, foreign society or foreign organization shall permit any discrimination in respect of the terms of a licence or the distribution of royalties collected; and
- (c) only make payment of royalties to a collecting society outside the Republic, if there is a <sup>n</sup>reciprocal agreement regarding royalties in place between that ~~that~~ collecting society and the foreign collecting society they intend to distribute to country and the Republic.

(4) (a) Any person who intentionally fails to submit a report to a collecting

society as contemplated in subsection (2)(b), shall be guilty of an offence.

(b) A person convicted of an offence under paragraph (a) shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, or if the convicted person is not a natural person, to a fine of a minimum of ten per cent of its annual turnover.

(c) For the purpose of paragraph (b), the annual turnover of a convicted person that is not a natural person at the time the fine is assessed is the total income of that person during the financial year during which the offence or the majority of offences were committed, and if that financial year has not yet been completed, the financial year immediately preceding the offence or the majority of offences, under all transactions to which this Act applies.

(d) If the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the minimum sentence prescribed in paragraph (b), it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.

#### **Control of collecting society by authors, performers or copyright owners**

22D. (1) A collecting society is subject to the control of the authors, performers or copyright owners whose rights that collecting society administers, and the collecting society shall, in such manner as may be prescribed—

(a) collect and distribute royalties in accordance with the constitution of the collecting society contemplated in section 22B(4)(c) and subsection (2);

(b) utilise amounts collected as royalties in accordance with the constitution of the collecting society contemplated in section 22B(4)(c) only for the purpose of distribution of the royalties to the authors, performers or copyright owners; and

(c) provide to each author, performer or copyright owner regular, full and detailed information concerning all the activities of the collecting society in respect of the administration of the rights of that author,

completed, the financial year immediately preceding the offence or the majority of offences, as the case may be, under all transactions in respect of all uses to which this Act applies.

(b) If the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the minimum sentence prescribed in subsection (6), it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.’’.

**Amendment of section 28 of Act 98 of 1978, as substituted by section 12 of Act 52 of 1984 and amended by section 25 of Act 125 of 1992**

28. Section 28 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) This section shall apply to any copy of the work in question made outside the Republic [**which if it had been made in the Republic would be an infringing copy of the work**], if the making of such copy constituted an infringement of copyright in the country in which the work was made if the making of such copy was without the authorization of the copyright owner.’’;  
and

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

“(5) This section shall [*mutatis mutandis*] with the necessary changes, apply with reference to an exclusive licensee who has the right to import into the Republic any work published elsewhere, if the making of such copy was without the authorization of the copyright owner ~~which would be an infringing copy of the work in the country in which it was made.’’.~~

**Insertion of sections 28O to 28S in Act 98 of 1978**

29. The following section is hereby inserted in the principal Act after section 28N:

**“Prohibited conduct in respect of technological protection measures**

**28O. (1)** No person may make, import, sell, distribute, let for hire, offer or expose for sale, hire or advertise for sale a technological protection measure circumvention device if such a person knows or has reason to believe that it will or is likely to be used to infringe copyright in a technologically protected work.