

## AUTHOR'S NOTE SERVICE 14 2012

This service incorporates substantial changes and developments in the law of copyright and related areas of the law and pertinent cases over the period June 2006 to June 2011. It amounts effectively to the replacement of most of the text dealing with the exposition of the law and could be categorised as constituting a new edition of the book. A brief resume of the main changes brought about by the service is set out below.

The major legislative change made during the period under review was the promulgation of the Intellectual Property Rights from Publically Financed Research and Development Act, 51 of 2008, together with Regulations. The texts of this act and the regulations, together with commentary on them, have been incorporated into the book.

A large number of judgements have come to the fore and these will be detailed below. These judgements and other developments in the law have caused new texts dealing with various topics to be introduced into the book. So-called 'narrow casting' as a species of broadcasting; the text on the 'idea/expression dichotomy' has been significantly elaborated and extended to cover 'format rights' and the 'look and feel' of works; the text on joint authorship has been extended; the subject of ownership of copyright has been elaborated with particular reference to the exceptions to the general rule that the author is the initial owner of the copyright in a work; the effect of the intellectual property rights from Publically Financed Research and Development Act on the ownership and licensing of copyright; the competence of the Copyright Tribunal to deal with licensing issues arising from the needletime legislation; the liability of internet service providers for infringement where the users of the service download copies of works; the reproduction and adaptation of works is elaborated upon; parallel importation as a form of copyright infringement; the nature of infringing copies; plagiarism as distinct from copyright infringement; the essential averments for formulating a claim of copyright infringement; various issues relating to pleadings, and more particularly annexing of copies of works relied upon to court papers; joint copyright owners as co-plaintiffs; the formality of obtaining exchange control approval for the assignment of copyright to a foreign person; implied licences; open source computer program licences; the Berne Convention; enforcement of foreign copyright by a South African court; reliance on foreign copyright law; 'notional goods' counterfeit goods cases; the practicalities of lodging a complaint in respect of trading in counterfeit goods; obtaining warrants in respect of counterfeit goods; applications to set aside seizures of counterfeit goods; compensation for dispossessed persons; and actions by customs officials in respect of counterfeit goods.

The following cases came to my attention during the period of review and have been incorporated into the book:

- Feldman NO v EMI Music Publishing SA (Pty) Ltd; Feldman NO v EMI Music SA (Pty) Ltd 1035 JOC (W);
- Greef and Others v Protection 4 U (Edms) Bpk t/a Pro-Techt International and Others, Case No 29121/06 in the TPD—unreported;
- Bestmed Medical Scheme v Board of Healthcare Funders of Southern Africa 848 JOC (T);

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- Honda Giken Kogyo KK & another v Hoffman International (Pty) Ltd and Others 2006 BIP 305 (W);
- Electronic Media Network Ltd v Naidoo and Others 2006 BIP 309 (W);
- Technical Information Systems (Pty) Ltd & another v Telkom SA Ltd 1047 JOC (W);
- King v South African Weather Services 1007 JOC (T);
- Pick 'n Pay Retailers (Pty) Ltd v Commissioner of South African Revenue Service and Others 2008 BIP 187 (C);
- Goncharko v The State, Case No A459/06 in the CPD—unreported;
- Shoprite Checkers (Pty) Ltd v The Commissioner of the South African Revenue Service and Others 2008 BIP 369 (C);
- Peter-Ross v Ramesar and Another 2008 (4) SA 168 (C);
- Van der Merwe and Another v Els and Another 2008 BIP 404 (C) ;
- Nu Metro Films Entertainment (Pty) Ltd and Others v Mr Video and Others 2008 BIP 317 (C);
- McCarthy Ltd v Hi-Fi Corporation (Pty) Ltd 1075 JOC (T);
- King v South African Weather Services 1067 JOC (A);
- Corex SpA v Reese's Food Imports (Pty) Ltd 2009 BIP 466 (WCC);
- Feldman NO v EMI Music Publishing SA (Pty) Ltd; Feldman NO v EMI Music SA (Pty) Ltd 1089 JOC (A);
- Mr Video (Pty) Ltd v Nu Metro Films Entertainment (Pty) Ltd 1097 JOC (A);
- Gallo Africa Ltd and Others v Sting Music (Pty) Ltd & Others, 2010 (6) 329 (SCA);
- Puma Ag Rudolf Dassler Sport v Rampar Trading (Pty) Ltd and Others, Case No 59/10 in the SCA—unreported;
- Minister of Trade and Industry and Another v EL Enterprises and Another 2011 (1) SA 581 (SCA);
- ABB Ag v Huadian South Africa (Pty) Ltd and Another, Case No 49373/2010 in the NGDP—unreported;
- Cadac (Pty) Ltd v Weber-Stephen Products Company (No. 1) 1020 JOC (W);
- Cadac (Pty) Ltd v Weber-Stephen Products Company (No. 2) 1112 JOC (A).

Additional literature dealing with copyright which has come to my attention has been incorporated into Section C of Part II of the book.

In order to facilitate cross-referencing and to simplify the process of updating references in the book, in parts I and III all references in the text, the table of cases, the table of statutes and the index to page numbers have been changed to paragraph numbers. However, references to page numbers remain in respect of parts II, IV and V. This distinction has been made clear in the various indices. Care should, however, be exercised when following up references to distinguish between those which denote paragraph numbers and those which denote page numbers.

The author has retired from active practice as an attorney (although he remains a consultant to Spoor & Fisher, specialist IP attorneys), and has taken up the position of Professor of Intellectual Property Law, and the incumbent of the newly created Chair of Intellectual Property Law, at Stellenbosch University.

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