



**STAATSKOERANT**  
**VAN DIE REPUBLIEK VAN SUID-AFRIKA**  
**REPUBLIC OF SOUTH AFRICA**  
**GOVERNMENT GAZETTE**

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**ALGEMENE KENNISGEWING**

KENNISGEWING 548 VAN 1982

DEPARTEMENT VAN NYWERHEIDSWESE, HANDEL  
 EN TOERISME

KONSEPWYSIGINGSWETSONTWERP OP  
 OUTEURSREG, 1983

Die volgende Konsepwetsontwerp om die Wet op  
 Outeursreg, 1978 (Wet 98 van 1978), soos gewysig, te  
 wysig word hierby ter algemene inligting en vir kommentaar gepubliseer.

Kommentaar moet voor 17 September 1982 aan die  
 Registrateur van Outeursreg, Privaatsak X400, Pretoria,  
 0001, gestuur word.

**WETSONTWERP**

Tot wysiging van die Wet op Outeursreg, 1978, ten  
 einde sekere uitdrukkings verder te omskryf; om die  
 tydperk van outeursreg in artistieke werke te bepaal;  
 om die magte van die Minister om regulasies te maak  
 uit te brei; en om voorsiening te maak vir aangeleent-  
 hede wat daarmee in verband staan

*Ingedien deur die Adjunk-minister van Nywerheidswese,  
 Handel en Toerisme*

Daar word bepaal deur die Staatspresident en die  
 Volksraad van die Republiek van Suid-Afrika, soos volg:

**Wysiging van artikel 1 van Wet 98 van 1978 soos gewysig  
 by artikel 1 van Wet 56 van 1980**

1. Artikel 1 van die Wet op Outeursreg, 1978 (hieronder  
 die Hoofwet genoem), word hierby gewysig—

(a) deur die vervanging van paragraaf (c) van subartikel  
 (1) van die omskrywing van "artistieke werk" deur  
 die volgende paragraaf:

"(c) [kunshandwerke] handwerke, insluitende artikels  
 van 'n tegniese aard, wat nie onder paragraaf (a) of (b)  
 val nie;"

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**GENERAL NOTICE**

NOTICE 548 OF 1982

DEPARTMENT OF INDUSTRIES,  
 COMMERCE AND TOURISM

DRAFT AMENDMENT BILL, 1983

The following Draft Bill to amend the Copyright Act,  
 1978 (Act 98 of 1978), as amended, is hereby published for  
 general information and comment.

Any comment should be forwarded to the Registrar of  
 Copyright, Private Bag X400, Pretoria, 0001, before 17  
 September 1982.

**BILL**

To amend the Copyright Act, 1978, so as to further  
 define certain expressions; to determine the period of  
 copyright of artistic work; to further extend the  
 powers of the Minister to make regulations; and to  
 provide for incidental matters

*Introduced by the Deputy Minister of Industries,  
 Commerce and Tourism*

Be it enacted by the State President and the House of  
 Assembly 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**

1. Section 1 of the Copyright Act, 1978 (hereinafter re-  
 ferred to as the principal Act), is hereby amended—

(a) by the substitution in subsection (1) for paragraph  
 (c) of the definition of "artistic work" of the following  
 paragraph:

"(c) works of [artistic] craftsmanship, including  
 articles of a technical nature, not falling within either  
 paragraph (a) or (b);"

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(b) deur die vervanging in subartikel (1) van die omskrywing van "tekening" deur die volgende omskrywing:

"tekening" ook 'n diagram, kaart of plan van watter aard ookal, insluitende van 'n tegniese aard;"

(c) deur die vervanging in subartikel (1) van die omskrywing van "Minister" deur die volgende woordomschrijving:

"Minister" die Minister van [Ekonomiese Sake] Nywerheidswese, Handel en Toerisme;" en

(d) deur die invoeging in subartikel (1) van die volgende paragraaf na paragraaf (b) van die omskrywing van "reproduksie":

"(c) enige werk, sluit 'n reproduksie in wat van 'n reproduksie van daardie werk gemaak is;"

### **Wysiging van artikel 15 van Wet 98 van 1978**

2. Artikel 15 van die Hoofwet word hierby gewysig deur die invoeging van die volgende subartikel na subartikel (3):

"(3A) Die outeursreg in 'n artistiese werk waarin reproduksies in die vorm van drie-dimensionele voorstellings te enige plek aan die publiek uitgereik is deur of met die toestemming van die eienaar van die outeursreg sal nie geskend word nie indien—

(i) reproduksies of aanwendings van sodanige werk van 'n drie-dimensionele voorstelling van sodanige werk (wat nie die oorspronklike werk is nie) gemaak word; of

(ii) reproduksies of aanwendings gemaak van 'n drie-dimensionele voorstelling van sodanige werk (wat nie die oorspronklike werk is nie) aan die publiek uitgereik word:

Met dien verstande dat—

(a) ten minste 10 jaar sou verloop het sedert die end van die kalenderjaar waarin drie-dimensionele voorstellings van die werk te enige plek vir die eerste keer aan die publiek uitgereik is deur of met die toestemming van die eienaar van die outeursreg; en

(b) sodanige drie-dimensionele voorstellings van sodanige werk artikels is wat hoofsaaklik 'n nutteitsdoel het en deur 'n industriële proses vervaardig word."

### **Wysiging van artikel 26 van Wet 98 van 1978**

3. Artikel 26 van die Hoofwet word hierby gewysig deur die invoeging van die volgende subartikel na subartikel (7):

"(8) Waar daar in 'n aksie wat uit hoofde van hierdie hoofstuk gebring is met betrekking tot die outeursreg in 'n artistieke werk waarvan reproduksies in die vorm van drie-dimensionele voorstellings te enige plek aan die publiek uitgereik is deur of met die toestemming van die eienaar van die outeursreg—

(i) beweer word dat die verweerder die outeursreg in die artistieke werk geskend het deur 'n daad te pleeg met betrekking tot die drie-dimensionele voorstelling van die werk; en

(b) by die substitusie in subseksie (1) for the definition of "drawing" of the following definition:

"'drawing' includes any diagram, map, chart or plan of whatever nature, including a technical nature;"

(c) by the substitution in subseksie (1) for the definition of "Minister" of the following definition:

"'Minister' means the Minister of [Economic Affairs] Industries, Commerce and Tourism;" and

(d) by the insertion in subseksie (1) of the following paragraph after paragraph (b) of the definition of "reproduction":

"(c) any work, includes a reproduction made from a reproduction of that work;"

### **Amendment of section 15 of Act 98 of 1978**

2. Section 15 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

"(3A) The copyright in an artistic work of which reproductions in the form of three-dimensional versions have been issued to the public anywhere by or with the consent of the owner of the copyright shall not be infringed if—

(i) reproductions or adaptations of such work are made from a three-dimensional version of such work (not being the original work); or

(ii) reproductions or adaptations made from a three-dimensional version of such work (not being the original work) are issued to the public:

Provided that—

(a) at least 10 years shall have elapsed since the end of the calendar year in which three-dimensional versions of the work were first issued to the public anywhere by or with the consent of the owner of the copyright; and

(b) such three-dimensional versions of such work are articles having a primary purpose which is utilitarian and are manufactured by an industrial process."

### **Amendment of section 26 of Act 98 of 1978**

3. Section 26 of the principal Act is hereby amended by the insertion after subsection (7) of the following subsection:

"(8) Where, in an action brought by virtue of this chapter with respect to the copyright in an artistic work of which reproductions in the form of three-dimensional versions have been issued to the public anywhere by or with the consent of the owner of the copyright—

(i) it is claimed that the defendant has infringed the copyright in the artistic work through performing an act in relation to a three-dimensional version of the work; and

(ii) dit vasgestel is dat outeursreg in die werk bestaan en dat die geheel of 'n wesentlike gedeelte van die voormelde reproduksies wat in die Republiek aan die publiek uitgereik is gemerk is om aan te dui—

(a) die naam van 'n persoon as synde die eienaar of uitsluitende lisensiehouer van die outeursreg te wees,

(b) die jaar waarin reproduksies van die werk in die vorm van drie-dimensionele voorstellings vir die eerste keer te enige plek aan die publiek uitgereik is, en

(c) dat outeursreg in die werk beweer word, dan, tensy dit uit die teendeel anders blyk te wees, sal die feite gestel in subparagrafe (a), (b) en (c) as korrek en bewys aanvaar word, en dat die verweerder te alle ter saaklike tye bewus was van sodanige feite.

(iii) Deur 'n artikel met die simbool C tesame met die naam van die betrokke persoon en die betrokke jaar te merk sal voldoende nakoming van die voorskrifte van paragraaf (ii) (a), (b) en (c) van hierdie subartikel wees."

#### **Wysiging van artikel 45 van Wet 98 van 1978**

4. Artikel 45 van die Hoofwet word hierby deur die volgende artikel vervang:

**"45. Reëling en beheer van verspreiding, [voordrag] op- of uitvoering of vertoning van werke.**

(1) Ondanks, andersluidende bepalings van hierdie Wet kan die Minister die regulasies uitvaardig wat hy nodig ag met betrekking tot die verspreiding, [voordrag] op- of uitvoering of vertoning van enige werk [of produksie].

(2) Sodanige regulasies kan aan 'n daarin vermelde persoon die bevoegdheid verleen om die verspreiding, [voordrag] op- of uitvoering of vertoning van so 'n werk [of produksie] te verbied of om die verspreiding, [voordrag] op- of uitvoering of vertoning daarvan te magtig op [die] enige sodanige voorwaardes in daardie regulasies uiteengesit.

(3) Die verspreiding, [voordrag] op- of uitvoering of vertoning van 'n werk [of produksie] ingevolge magtiging kragtens sodanige regulasies verleen, maak nie 'n skending van die outeursreg in sodanige werk [of produksie] uit nie, maar die [outeur] eienaar van die outeursreg word nie daardeur [sy] van enige reg wat hy mag gehad het om [op] 'n redelike vergoeding te verkry, wat by ontstentenis van ooreenkoms by arbitrasie bepaal word, ontnem nie."

#### **Invoeging van artikel 45A in Wet 98 van 1978**

5. Die volgende artikel word hierby na artikel 45 in die Hoofwet ingevoeg:

**"45A. Reëling en beheer van reproduksies of aanwending van artistieke werke.**

(1) Ondanks andersluidende bepalings van hierdie Wet kan die Minister regulasies uitvaardig wat hy nodig ag met betrekking tot die reproduksie of aanwending, of die uitreiking aan die publiek van reproduksies of aanwendings, van enige artistieke werk.

(ii) it is established that copyright subsists in the work and that all or substantially all of the aforesaid reproductions issued to the public in the Republic have been marked so as to indicate—

(a) the name of a person as being the owner or exclusive licensee of the copyright,

(b) the year in which reproductions of the work in the form of three-dimensional versions were first issued to the public anywhere, and

(c) that copyright is claimed in the work, then unless the contrary is shown it shall be presumed that the facts stated in accordance with subparagraphs (a), (b) and (c) are correct and proven, and that the defendant was at all material times aware of such facts.

(iii) Marking an article with the symbol C accompanied by the name of the relevant person and the relevant year shall be sufficient compliance with the provisions of paragraph (ii) (a), (b) and (c) of this subsection."

#### **Amendment of section 45 of Act 98 of 1978**

4. The following section is hereby substituted for section 45 of the principal Act:

**"45. Regulation and control of [circulation] distribution, [presentation] performance or exhibition of works.**

(1) Notwithstanding anything to the contrary in this Act contained, the Minister may make such regulations as he may consider necessary in regard to the [circulation] distribution, [presentation] performance or exhibition of any work [or production].

(2) Such regulations may empower any person specified therein to prohibit the [circulation] distribution, [presentation] performance or exhibition of any such work [or production] or to authorise the [circulation] distribution, [presentation] performance or exhibition thereof on any such conditions as may be specified in those regulations.

(3) The [circulation] distribution, [presentation] performance or exhibition of any work [or production] in pursuance of authority granted in terms of such regulations shall not constitute an infringement of copyright in such work [or production], but the [author] copyright owner shall not thereby be deprived of [his] any right which he might have had to obtain a reasonable remuneration, which shall in default of agreement be determined by arbitration."

#### **Insertion of section 45A in Act 98 of 1978.**

5. The following section is hereby inserted in the principal Act after section 45:

**"45A. Regulation and control of reproduction or adaptation of artistic works.**

(1) Notwithstanding anything to the contrary in this Act contained, the Minister may make such regulations as he may consider necessary in regard to the reproduction or adaptation, or issuance to the public of reproductions or adaptations, of any artistic work.

(2) Sodanige regulasies kan aan 'n daarin vermelde persoon die bevoegdheid verleen om 'n reproduksie, of aanwending of die uitreiking aan die publiek, te magtig van reproduksies of aanwendings van enige artistieke werk op die voorwaardes in daardie regulasies uiteengesit.

(3) Die reproduksie of aanwending, of die uitreiking aan die publiek van reproduksies of aanwendings, van enige artistieke werk ingevolge magtigings kragtens sodanige regulasies verleen, maak nie 'n skending van die outeursreg in sodanige werk uit nie, maar die eienaar van die outeursreg word nie daardeur van enige reg wat hy mag gehad het om 'n redelike vergoeding te verkry, wat by ontstentenis van ooreenkoms by arbitrasie bepaal word, ontnem nie.

#### **Wysiging van artikel 47 van Wet 98 van 1978**

6. Artikel 47 van die Hoofwet word hierby deur die volgende artikel vervang:

“47. *Kort titel en inwerkingtreding.*—Hierdie Wet heet die Wet op Outeursreg, 1978, en tree in werking op 1 Januarie 1979, behalwe artikels 1, 39 en 40, wat in werking tree by afkondiging van hierdie Wet in die *Staatskoerant*, en artikels 45 en 45A, wat in werking tree op [’n datum] datums deur die Staatspresident in die *Staatskoerant* bepaal.

#### **Kort titel**

7. Hierdie Wet heet die Wysigingswet op Outeursreg, 1983.

(2) Such regulations may empower any person specified therein to authorise the reproduction or adaptation, or the issuance to the public of reproductions or adaptations, of any artistic work on such conditions as may be specified in those regulations.

(3) The reproduction or adaptation, or the issuance to the public of reproductions or adaptations, of any artistic work in pursuance of authority granted in terms of such regulations shall not constitute an infringement of copyright in such work, but the copyright owner shall not thereby be deprived of any right which he might have had to obtain a reasonable remuneration, which shall in default of agreement be determined by arbitration.”.

#### **Amendment of section 47 of Act 98 of 1978**

6. The following section is hereby substituted for section 47 of the principal Act:

“47. *Short title and commencement.*—This Act shall be called the Copyright Act, 1978, and shall come into operation on 1 January, 1979, except sections 1, 39 and 40, which shall come into operation upon promulgation of this Act in the *Gazette*, and except [section] sections 45 and 45A, which shall come into operation on [a date] dates fixed by the State President by proclamation in the *Gazette*.”.

#### **Short title**

7. This Act shall be called the Copyright Amendment Act, 1983.

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