



PASA
PUBLISHERS' ASSOCIATION
OF SOUTH AFRICA

Copyright Information Guide



Compiled by
The Publishers' Association
of South Africa
Copyright Committee

COPYRIGHT FOR TRAINERS

Copyright documents for publishers' marketers and trainers

1. *A Quick Guide for Marketers and Trainers* is aimed at publishers' representatives and teacher trainers. This summary of copyright will help marketers and trainers to act according to the South African laws of copyright.
2. *Frequently Asked Questions* which could be handed out to users of copyright materials as a quick reference.

How to use these documents:

- Contact education department officials like curriculum advisers, and learning area or subject advisers. Either hand them copies of the *Frequently Asked Questions* or ask them to allow you to speak at meetings of head office officials and school principals.
- Use about five minutes during every workshop or training session to inform participants about the key copyright issues that affect them.
- Hand out these pamphlets at schools.
- Speak to principals when you visit schools.

Stress that copyright protects copyright owners like authors and publishers. However, copyright also allows copyright users to use works of the mind or creative works which would otherwise not have been available to them. For works of the mind to come into being, there must be above all somebody who has something to say. Then there must be an incentive to reduce a creative work into a permanent form (e.g. printed material) and to produce and publish it for the benefit of the intended readership. Without incentive, no works will be available. Copyright is the fuel that feeds the fire of creativity (adapted from Abraham Lincoln, a patent lawyer, who said the same about patents). Therefore, both owners and users benefit from respecting copyright.

Ask PASA

Should you become aware of copyright infringement; the Publishers' Association of South Africa (PASA) can give you advice or refer you to copyright experts who can advise you on what action to take.

A call for your support

Many people do not attach enough value to intellectual property and do not respect people's creative work. At PASA we respect others' efforts and academic contributions because we support creativity and originality. Therefore, we strongly discourage the infringement of copyright law. Copyright infringement is a type of theft and where a work is copied without even acknowledging the original author, a type of fraud. This behaviour goes against our moral and social obligations to respect the work and value created by others.

We believe that educating people about copyright is an important responsibility of publishers and other role-players. The PASA Copyright Committee is taking the lead in raising awareness of the strong link between encouraging creativity and respect for copyright with its Copyright Campaign. Although much still needs to be done in terms of creating awareness, we believe that this campaign makes for a good start and will prompt others to become involved in taking a stand against copyright infringement in their daily work and lives.

Thank you

PASA Copyright Committee - July 2007

Copyright

A Quick Guide for Marketers and Trainers



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Copyright Committee

What is intellectual property?

Intellectual property is the backbone of the entire information industry. The law protects people's rights to own their creative products, be they ideas, inventions, written works, computer programmes or even the names and logos of companies or consumer items. The product of a person's mental activity is referred to as intellectual property.

There are four forms of intellectual property in South African law.

1. Patents protect inventions.
2. Trademarks protect the unique name or symbol identifying businesses or products.
3. Copyright protects the original works of authors, composers, artists, musicians, film-makers and software developers.
4. Designs can be registered to protect creative aspects of articles that are beautiful such as jewellery or functional such as a gearbox. A design has to be new and original. Protection is limited to the specific appearance of the article. Whereas a patent is primarily intended to cover the conceptual features of an invention underlying potentially a range of embodiments, a design registration covers the form and outer appearance of an article.

Publishers' marketers and trainers can provide an important service in informing customers about intellectual property rights.

What is copyright?

Copyright is a form of intellectual property. Copyright, as the word suggests, is the right of the copyright owner not to have their creative work copied by someone else. Copyright applies to literary, musical and artistic works and the design and layout of these creative works. Copyright also applies to website content, movies, DVDs, videos and video games, sound recordings, satellite images and sounds, as well as computer programmes.

Who owns copyright?

In the publishing industry, publishers, authors, illustrators and photographers are typical copyright owners. Publishers' customers, like teachers and learners, are copyright users because they use that which publishers produce. It is for the use of this intellectual property in the form of copyright material that copyright owners can earn an income.

A printed publication can have more than one copyright owner. The author, photographer, and illustrator are the initial copyright owners of the text and images. The way a publisher chooses to present that content is also protected – by copyright of the published edition. The author may hold copyright in the content and the publisher is the copyright owner of the published edition, depending on the author's contract with the publisher.

Can copyright material be copied?

You would not be able to reproduce someone's written work in order to sell it and make a profit unless you applied to the copyright owner and paid them a fee. However, the Copyright Act 98 of 1978 does, to a limited extent, allow copying for private use without applying to the copyright owner.

Copying out-of-print titles

Sometimes, a title may be temporarily unavailable because it has gone out of print. The copyright user can apply directly to the copyright owner, who is usually the publisher, for permission to reproduce a title or an extract. The user can also approach a third party such as

a print-on-demand provider who will apply for permission from the copyright owner to copy the book and will also print the book in limited numbers.

Applying to copy out-of-print titles

The copyright owner will grant permission in the form of a transactional licence, which covers the reproduction of a specific number of copies at a particular time. The cost of a transactional licence depends entirely on the copyright owner and varies considerably. This licence does not cover an unlimited number of reproduction copies. The transactional licence also does not include reproduction at a later stage without reapplication. The copyright user would need to make an application to the copyright owner for every copy that was going to be reproduced.

Copying parts of a title

When a copyright user wants to reproduce only a part of a title, the user can apply for permission to the Dramatic, Artistic and Literary Rights Organisation (DALRO). DALRO can give permission in cases where the copyright owner has given DALRO the authority to issue transactional licences on its behalf and to charge the agreed and current fees. DALRO can grant a copyright license for up to 10% or one chapter of a book.

Illegal reproductions of copyright material

When a person or institution makes a copy of a book without the copyright owner's permission, they commit one or more of the following unlawful acts:

- * The infringement of the copyright in the literary work and the published edition.
- * The infringement of the publisher's registered trademark.
- * An offence under the Counterfeit Goods Act. This Act creates a number of offences relating to making and dealing in counterfeit and pirated goods.

Taking action against illegal copiers

South African law allows the copyright owner to take legal action against the illegal copier. The copyright owner can open a civil or a criminal case. In civil cases, an individual enforces his or her rights against another person. In criminal cases the State prosecutes the accused for acting outside of the law. The publisher, therefore, could start civil proceedings against the illegal copier for disregarding their copyright and their trademark. The publisher could also open a criminal case against the offender, for ignoring their copyright as well as for dealing in counterfeit goods.

The copyright owner must produce evidence of unlawful conduct. The copyright owner must be able to prove that at least one unauthorised copy was produced and/or sold without the copyright owner's permission. However, the copyright owner's case has more chance of being successful if he or she can prove ongoing unlawful conduct such as further reproduction and sales of an unauthorised copy obtained by means of a test-purchase. A test-purchase involves the buying of an infringing copy and storing the copy and till slip(s) in a sealed bag in a safe before handing the bag over to authorities when making a complaint or filing a case.

If you become aware of illegal copying, you should immediately inform your manager or the person in your company who deals with copyright permissions. Try to supply enough detail and evidence for the publisher to take civil and/or criminal action.

Ask PASA

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We believe that educating people about copyright is an important responsibility of publishers and other role-players. The PASA Copyright Committee is taking the lead in raising awareness of the strong link between encouraging creativity and respect for copyright with its Copyright Campaign. Although much still needs to be done in terms of creating awareness, we believe that this campaign makes for a good start and will prompt others to become involved in taking a stand against copyright infringement in their daily work and lives.

Thank you
PASA Copyright Committee
July 2007

What, then, must I do if I need to make multiple copies for my students in excess of what the law allows?

Legally, you may only make multiple copies under licence. For photocopying of up to 10% (ten percent) or one chapter of a book, or one article from a serial publication, you can get a license from the Dramatic, Artistic and Literary Rights Organisation (DALRO) (Tel: 011 489 5000 or e-mail dalro@dalro.co.za). You can also apply to the publisher of the work to be copied. DALRO will inform you of how much you will have to pay per page, depending on the type or category of your institution or organisation.

Copyright

Frequently Asked Questions



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Introduction

The Publishers' Association of South Africa (PASA) often gets asked questions about copyright. The following questions are those most frequently asked. More information is available on the PASA website: www.publishsa.co.za

What is copyright?

Copyright is the right to prevent others from copying, or using for commercial gain, your original written or artistic work. Copyright protects a physical representation of an idea. The idea itself does not have to be original but the representation must be original. Copyright protection is given to the authors of original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works. This protection applies to both published and unpublished works.

There are many definitions of copyright. One definition of copyright is “the exclusive right in relation to work embodying intellectual content (i.e. the product of the intellect) to do or to authorise others to do certain acts in relation to that work...acts [which]represent...the manners in which that work can be exploited for personal gain or for profit.” (Owen Dean, *Handbook of South African Copyright Law*, Juta & Co Ltd, 1989.)

The owner of copyright has the exclusive right to do and to authorise others to do the following:

- Reproduce the work in copies or sound recordings.
- Make derivative works based upon the original.
- Distribute copies or sound recordings of the original to the public by sales, rentals, leasing, lending or licensing.
- Perform the original publicly, and that would include the use of digital audio.
- Display the original publicly.

What is the difference between ‘copyright’ and ‘intellectual property’?

Intellectual property is the product of the intellect, or mind.

There are four forms of intellectual property in South African law.

1. Patents protect inventions.
2. Trademarks protect the unique name or symbol identifying businesses or products.
3. Copyright protects the original works of authors, composers, artists, musicians, film-makers and software developers.
4. Designs can be registered to protect creative aspects of articles that are beautiful such as jewellery or functional such as a gearbox. A design has to be new and original. Protection is limited to the specific appearance of the article. Whereas a patent is primarily intended to cover the conceptual features of an invention underlying potentially a range of embodiments, a design registration covers the form and outer appearance of an article. Publishers' marketers and trainers can provide an important service in informing customers about intellectual property rights.

Copyright is the right to protect intellectual property from unauthorised usage.

What kinds of works are eligible for copyright protection?

Literary works, musical works, artistic works, cinematograph films, sound recordings, broadcasts, programme-carrying signals, published editions and computer programmes are all protected by copyright. (See section 2 (1) of the Copyright Act 98 of 1978.)

Does this mean, in the case of a literary work, that it has to have some outstanding literary quality?

No. The Copyright Act defines a literary work as being ‘irrespective of literary quality and in whatever mode or form expressed.’ This means that a literary work does not have to be a great work of literature. The literary work does not have to be a specific kind of literary work; nor does it have to follow a certain way of doing things.

The Act lists the following literary works as being eligible for protection:

- novels, stories and poetical works
- dramatic works, stage directions, cinematograph film scenarios and broadcasting scripts, textbooks, treatises, histories, biographies, essays and articles
- encyclopaedias and dictionaries
- letters, reports and memoranda
- lectures, speeches and sermons
- tables and compilations (collections), including tables and compilations of data stored or embodied in a computer or a medium used in conjunction with a computer e.g. an electronic database (Computer programmes themselves do not qualify for protection as literary works, they are protected as a separate category).

Thus, when the Act refers to a ‘literary work’, it really means a ‘written’ work as distinct from a drawn, painted or photographed work.

How long does copyright last?

In South Africa, copyright lasts for the life of the author plus 50 years. This means that the original work is protected from unauthorised reproduction for 50 years from the end of the year in which the author dies. In some other countries (for instance, the United States, the United Kingdom and the countries of the European Union) the duration of copyright is the life of the author plus 70 years. When copyright expires, the work becomes public property and anyone may use the original work or earn money from it.

What is a published edition?

In every book, journal, periodical or magazine there are two separate but interlinked copyrights.

1. The literary work or content: Copyright usually belongs to the author, unless he or she has transferred copyright to the publisher.
2. The published edition or typographical arrangement on the page: (Typography is the planning, selection and setting of type for a printed work.) Copyright in the published edition belongs to the publisher.

Copyright in the published edition lasts for 50 years from date of publication. Even when copyright in the literary work has expired, copyright in the published edition may still exist.

How do I get copyright in my book?

In South Africa you do not need to register copyright (however, you may do so in the case of cinematographic films) as you would patents and trademarks. Copyright arises automatically - in other words, the ideas you express on the page become your intellectual property as you write them.

Is my work protected in other countries as well as in South Africa?

Yes. South Africa is a signatory to the Berne Convention, an international agreement on copyright. Countries that have signed the Berne Convention have agreed to offer the same protection to literary and artistic works from other member nations as they offer to their own. This is known as the principle of national treatment. This means that your work is protected in the United Kingdom, for example, under the British Copyright Act.

But not all copyright acts are the same, are they?

Copyright Acts differ from country to country, but all have basic characteristics in common and must afford the minimum protection agreed upon in the Berne Convention. The South African Copyright Act is in the Anglo tradition, which means that the Act is similar in many respects to the British and the Commonwealth Acts.

How can I protect my work?

The answer to this question is quite complicated. Strictly speaking, you do not have to do anything, as your work is automatically protected under the Copyright Act. But if someone copied your work, and you challenged them, you would have to *prove* in court that you are the owner of copyright. In the case of personal documents, such as letters, proving they belong to you is relatively easy. When it comes to a manuscript for a book, an article, a play or a film script, proving authorship could be more difficult. You should always write your name and the date of writing on your work. You could place the work in a sealed envelope and send it to yourself by registered post. If you have entered into any correspondence, with a publisher or anyone else, in respect of your work, keep that correspondence.

But if I tell someone my idea for a plot, and they subsequently write a book, how can I prove the idea was mine?

There is no copyright in ideas. This is because the law cannot protect something you cannot see or touch, like an idea. It is not easy to prove what people think. However, as soon as you write down or record your idea in some way, your idea earns copyright protection. The answer, we suppose, to this question is that you should not communicate your plot ideas to anyone. Authors sometimes suspect that publishers accept their manuscripts and then publish them under someone else's name. No *reputable* publisher would take part in such deceitful and illegal activities.

What does the copyright sign (©) mean?

The copyright sign used to be compulsory in countries that belonged to the Universal Copyright Convention (UCC). The copyright sign made sure that works that originated from outside UCC member countries were protected within those countries.

The copyright sign is no longer a requirement of the UCC, and the sign no longer has any legal status. However, all copyright owners are strongly advised to use the sign on their works. The copyright sign helps to identify the copyright owner and the year in which the work was first created, or first published.

What are moral rights?

According to section 20 of the Copyright Act, the author has the right to be identified as the author of a work. This is the right of paternity. The author also has the right to object to any adaptation of the work that would reflect badly on him or her. This is the right of integrity.

What is plagiarism?

If someone passes off your work as his or her own, this is plagiarism. Plagiarism involves not only copying, but also an element of deceit. If someone publishes your work under another person's name or includes long passages from your work without acknowledgement, this is also plagiarism. Plagiarism of copyright protected works is also a copyright infringement (Plagiarism may also occur where copyright protection has lapsed). Plagiarism is also fraud as that person is pretending to be the author, when, in actual fact, you are the author.

What is copyright infringement?

According to section 6 of the Copyright Act, only the copyright owner may do the following, or authorise the doing of the following:

- reproduce the work in any manner or form
- publish the work
- perform the work in public
- broadcast the work
- transmit the work in a diffusion service, e.g. cable television
- adapt the work

Anyone who performs any of these actions has infringed copyright. It is also copyright infringement to import into South Africa, other than for your private and personal use, an article, if you know that the article in question is an infringing article (section 23). In other words, in the field of copyright the importation of genuine articles from unauthorised or foreign distributors may infringe the copyright of the owner or exclusive licensee in South Africa.

How, then, might I get my work published, if only I am allowed to publish it?

By signing a contract with a publisher, you give him or her an exclusive licence to publish your work. An exclusive licence means that only the publisher with whom you have contracted may publish your work.

Am I allowed to photocopy part of a book for my own personal and private use?

This is a surprisingly difficult question to answer! Section 12(1)(a) of the Act states that: "...copyright is not infringed by any fair dealing with a literary or musical work for the purposes of research or private study by, or the personal or private use of, the person using the work." 'Fair dealing' is a difficult concept to explain because what is 'fair' in any given situation will always depend on the circumstances of that situation. However, it is reasonable to expect that a single copy of part of a work, made for your own use, will qualify as 'fair dealing'.

Is it correct that as long as I photocopy ten percent or less of a published work, this is permitted?

No, it is not correct at all. The Copyright Act says nothing about ten percent or about any other percentage. Ten percent may be 'fair' but then again, it may not, since the test for fair dealing is quantitative (i.e. the extent of the extract copied) as well as qualitative (i.e. the importance of the extract in the context of the work as a whole). Fair dealing is a test applied after the fact in which all circumstances are taken into account. Copying 8 lines of a poem of 40 lines was held to be an infringement.

Surely it would be better if the Act set out clearly what amounts to fair dealing?

As we have said, fairness depends on the circumstances. The Act cannot list every circumstance imaginable. If you were charged with copyright infringement but felt you had acted fairly, you might argue that you did not copy more than you needed. Fair dealing is a defence against a charge of copyright infringement.

But surely I am allowed to make more than one copy if there is no commercial gain involved?

It is a common misunderstanding that the law allows you to copy for non-profit use. The Act says nothing about special allowances for non-commercial use. However, the regulations in section 13 of the Act, offer certain allowances for educational institutions and for non-profit libraries. These include a specified number of multiple copies strictly for classroom use or discussion, but *do not include* compilations, such as course-packs or a book of poetry from different poets, anthologies. The copyright regulations are too long and complicated to list here, but all educators and librarians should obtain a copy of the Act and get to know what it says.

I want my students each to copy an article from a magazine or a journal for themselves. Can I put a photocopy of the article on the reserve shelf (short loan collection) in my educational institution's library for each student to copy under 'fair dealing'?

No. The photocopied article on the reserve shelf has not been made in terms of section 12 of the Act, nor of the section 13 regulations, and is thus an infringing copy.

How about if I put the journal itself (not a photocopy) on the reserve shelf and tell my students to copy it for themselves?

Although each student may make a 'fair dealing' copy, 100 students each making a copy results in 100 copies, whereas fair dealing is intended to apply in the case of the single copy made by the person using the work. Although the Copyright Act is silent on this practice, one cannot imagine that a court would regard it as 'fair'. It could be termed 'co-ordinated personal copying' and be considered copyright infringement.

What, then, must I do if I need to make multiple copies for my students in excess of what the law allows?

Legally, you may only make multiple copies under licence. For photocopying of up to ten percent or one chapter of a book, or one article from a serial publication, you can get a license from the Dramatic, Artistic and Literary Rights Organisation (DALRO) (Tel: 011 489 5000 or e-mail dalro@dalro.co.za). You can also apply to the publisher of the work to be copied. DALRO will inform you of how much you will have to pay per page, depending on the category of your institution or organisation.

If I scan a short extract from a book, or an article in a journal into my computer and transmit it electronically to my students, do I have to get a licence?

Yes. Altering the format of a copyright-protected work by converting it to electronic format and then communicating it to someone at a distant location is a prohibited act, and may only be done under licence.

May I download and print out an article from the Internet and photocopy it for my class of 20 students?

Fair dealing applies in the digital as well as the analogue (print) environment. You may print out a copy for your personal or private use, but you may not further reproduce it for students without permission from the owner of copyright.

How do I get permission?

You need to get permission from the owner of copyright.

How about newspapers and magazines?

Unlike academic and professional journals, newspapers and magazines usually control their own reprographic reproduction, i.e. photocopying rights. You need to contact an editor of the publication to get permission. If a freelancer has written the article, he or she will often own copyright. Nonetheless, your first stop should be the publication itself.

If the book from which I want to copy is out of print, surely I can go ahead?

No. 'Out of print' does not necessarily mean 'out of copyright'. Unless the copyright has expired you would still have to apply to the copyright owner to make photocopies.

But if the book is out of print and unavailable, the publisher is not losing any sales by my copying his book.

Publishers and authors do not only make money from a work when it is in print. Sales are not the only way to earn income from a work. Long after a book is out of print it may still earn money for its creators through the sale of translation rights, film rights and photocopying rights. Many publishers are now moving into the field of offering their books for which only a small demand exists through 'on-demand' digital printing. As more and more books are digitized, the issue of out-of-print titles is likely to become less significant over time.

What about theses and dissertations, which are kept in the library or archive of the educational institution where the student completes his or her Master's or Doctoral degree?

Although a thesis or a dissertation is not a published work, it is still copyright-protected, and the author of the work is the copyright owner unless he or she has transferred copyright in writing to the institution.

Since DALRO does not own copyright in the books and journals, how can it license the photocopying of them?

It is not necessary to own copyright in a work in order to license photocopying. Copyright consists of a whole bundle of rights, including the right to:

- reproduce a work
- publish a work
- publish a work in a certain territory or in a certain language
- adapt a work (e.g. make a film script from a book or turn a long and complex novel into a easy reader for adults)
- include a work in an anthology of short stories and poems.

In order to license a photocopy, a person or institution other than the copyright owner needs only to possess the right of reproduction.

How does DALRO get the right of reproduction?

DALRO enters into agreements with authors and publishers which give DALRO the right to issue photocopying licences. DALRO collects the fees and distributes them to publishers who pass a share on to the authors.

Why should I have to pay copyright fees? Isn't information supposed to be free?

The royalties collected by DALRO find their way back to the owners of copyright, the people who have, through their mental efforts, created the intellectual property in question. If writers or artists do not earn money for their creative efforts, they will not have any reason to go on creating. Therefore, there would *be* no information. In any case, no photocopied page is free. You pay for the paper, the ink, the toner and the use of the machine. When you pay a copyright fee as well, you also pay for the content – the most important part of the photocopied page.

The Publishers' Association of South Africa (PASA)

The largest publishing industry body in South Africa committed to creativity, literacy, the free flow of ideas and a culture of reading.

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