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KNOWLEDGE OF INTELLECTUAL PROPERTY LAWS AS A MODERATOR OF THE RELATIONSHIP BETWEEN MORAL DEVELOPMENT AND ATTITUDES TOWARDS UNAUTHORISED COPYING OF SOFTWARE

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A Research Report Submitted to the Faculty of Humanities, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree Master of Arts (Industrial Psychology) by Coursework and Research Report.

DECLARATION

I hereby declare that this Research Report is my own work. It is submitted in partial fulfilment for the degree of Master of Arts (Industrial Psychology) by Coursework and Research Report at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination at any other University.

_____

Bernadette King

20 April 2007

DEDICATION

For Ryan, who taught me perseverance.

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ABSTRACT

Different researchers commit themselves to differing hypotheses when addressing the relationship between attitudes to unauthorised copying of software and the level of moral development. Some concentrate on moral intensity, others on moral judgement and still others on ethical decision-making. Some researchers assert that no one single hypothesis is correct but that certain hypotheses will be true under certain conditions. The idea that there is no single correct hypothesis has paved the way for the consideration of moderator variables of the attitudes to unauthorised copying of software and the level of moral development relationship. One variable in particular, that is, the Knowledge of Intellectual Property laws, has not yet been empirically examined in terms of its capacity as a moderator for this relationship.

This exploratory, non-experimental, cross-sectional design explores the relationship between attitudes to unauthorised copying of software and the level of moral development as well as the effect of Knowledge of Intellectual Property laws on this relationship. A questionnaire was distributed to three medium-sized organisations in the Johannesburg area. The questionnaire consisted of a biographical blank and three different scales. The biographical blank was used as a means of examining the computer background of the respondents whilst the scales measured respondent attitudes to unauthorised copying of software, levels of moral development and respondent knowledge of Intellectual Property laws. The researcher received responses from 150 respondents from across the three organisations.

It was with these 150 responses that two types of analyses were conducted. The initial analysis was a Pearson's Product-Moment Correlation which was used to determine the nature of the relationship between attitudes to unauthorised copying of software and level of moral development. The second analysis was a moderated multiple regression which was used to determine the moderator impact of Knowledge of Intellectual Property laws on the relationship between the independent and dependent variables.

The results of the correlation indicated that there is a significant positive relationship between the respondents' attitudes to unauthorised copying of software and the level of moral development. Additionally, there are significant relationships between each measured level of moral development with the respondents' attitudes. The moderated multiple linear regression revealed that Knowledge of Intellectual Property laws does not have a moderating effect on the relationship between attitudes to unauthorised copying of software.

A discussion of these findings is included together with limitations and practical implications of the study as well as recommendations for future research.

TABLE OF CONTENTS

DECLARATION……...…ii

DEDICATION ……....iii

ACKNOWLEDGMENTS……..…..iv

ABSTRACT…….…..v

TABLE OF CONTENTS……...vii

LIST OF TABLES AND FIGURES …….....x

CHAPTER ONE

INTRODUCTION**……...1**

CHAPTER TWO

LITERATURE REVIEW**……5**

2.1 Kohlberg's Theory of Moral Development **……6**

2.2 Attitudes to Unauthorised Copying of Software **……..13**

2.3 Knowledge of Intellectual Property Laws **……20**

CHAPTER THREE

METHOD**..... ……...26**

3.1 Research Design**……26**

3.2 Sample**……...27**

3.3 Procedure**…...……36**

3.4 Instruments and Measures**…….37**

3.4.1 General Biographical Questionnaire**……..37**

3.4.2 Attitudes to Unauthorised Copying of Software Scale**……..38**

3.4.3 Levels of Moral Development Scale**……..39**

3.4.4 Knowledge of Intellectual Property Laws Scale……43

3.5 Analysis……..44

3.5.1 Preliminary Analysis……..44

3.5.2 Secondary Analysis……45

CHAPTER FOUR

RESULTS……..……...……49

4.1 Preliminary Analysis Results……...……..49

4.1.1 Means and Frequencies……...……...49

4.1.2 Internal Reliability Analysis.....51

4.2 Secondary Analysis Results……..……53

4.2.1 Correlation.....53

4.2.2 Moderated Multiple Regression……...……..56

CHAPTER FIVE

DISCUSSION……60

5.1 Discussion of Results…….……60

5.2 Limitations…….……69

5.3 Directions for Future Research.....74

CHAPTER SIX

CONCLUSION……76

REFERENCE LIST……78

APPENDIX 1 – The South African Copyright Act 98 of 1978.....86

APPENDIX 2 – Participant Information Sheet ……..……128

APPENDIX 3– Questionnaire**.....129**

SECTION 1: BIOGRAPHICAL QUESTIONNAIRE

SECTION 2: ATTITUDES TO UNAUTHORISED COPYING OF SOFTWARE SCALE

SECTION 3: LEVELS OF MORAL DEVELOPMENT SCALE

SECTION 4: KNOWLEDGE OF INTELLECTUAL PROPERTY LAWS SCALE

LIST OF TABLES AND FIGURES

Table 1 Kohlberg's Theory of Moral Development**……..……10**

Table 2 Frequencies and Percentages of Respondents' Age, Gender, Race, Education, Occupation and Work Sector **…….…….31**

Table 3 Frequencies and Percentages of Respondents' Computer Usage**……..…35**

Table 4 Division of Statements into Stages and Levels of Moral Development **...42**

Table 5 Means, Standard Deviations and Minimum and Maximum Scores**……..50**

Table 6 Internal Consistency Reliabilities of the Measuring Instruments**……..52**

Table 6(a) Number of Respondents for *Particular* Moral Development Items **……53**

Table 7 Correlation between Attitudes to Software Copying and total level of moral development **……54**

Table 7(a) Correlation with Knowledge of IP Laws**……...56**

Table 8 Regression of P-values for Attitudes**……...…..57**

Table 8 (a) Regression of p-values..**……59**

Figure a Best-fit model for ethical computer use decisions**……16**

Figure b Redefining the Best-Fit Model**……...17**

Figure 1 Model of Moderator Effect**……47**

CHAPTER ONE

INTRODUCTION

Lickona (1976) writes of an ancient question put to Socrates by Meno:

"Can you tell me, Socrates, whether virtue is acquired by teaching or by practice; or if neither by teaching nor practice, then whether it comes to man by nature, or in what other way?"

Socrates answered, "You must think I am very fortunate to know how virtue is acquired. The fact is that far from knowing whether it can be taught, I have no idea what virtue is"

(Lickona, 1976, p.3)

This philosophical question is put to every scholar interested in the topic of morality as it addresses a very important element of morality; that is, that morality or virtue as such, is abstract. It is a concept that many individuals cannot characterise exactly. Socrates replies that he has no idea what virtue is and in so replying cautions any morality scholar to the vastness and uniqueness of morals, morality and moral development as well as related topics. In addition to this, studies which concentrate on morals, morality and moral development take into account various theoretical perspectives regarding these concepts and as such, there is no universal agreement as to the existence of one true and correct theory to explain moral concepts.

On this note, the question then raised is: Is it possible to measure scientifically one's level of moral development? The answer to this is that one can *only* "scientifically describe the phenomenon" (Schakowski, 1996, p.12). It is then possible to use a myriad of moral

theories to describe morality and in so doing, theorists and researchers endeavour to explain the concept of morality more fully.

This study is no different. The present research sets out to strengthen previous research conducted on the levels of moral development and furthermore, expands moral research to the field of unauthorised copying of software such that an investigation into the relationship between attitudes to unauthorised copying of software and the level of moral development is explored.

In particular, the purpose of the current research is to expand on the minimal research performed on higher levels of moral development and unauthorised copying of software. To do this, it will explore the possibility of a relationship between attitudes to unauthorised copying of software and the levels of moral development and will further consider Knowledge of Intellectual Property laws as a moderator of the relationship. In doing so, the present research is important to further the literature on information systems and computer ethics, as it will hopefully provide new conceptual insights into individuals' standpoints on unauthorised copying of software. This is due to the fact that "the proliferation of computers in today's society has spawned new ethical dilemmas for computer users" (Simpson, Banerjee & Simpson, 1994, p. 431).

Specifically, it is the unauthorised copying of computer software that continues to be "a major drain on the global economy" (Limayem, Khalifa & Chin, 2004, p.414). It has been discovered by the Business Software Alliance (BSA) and the Software Publishers

Association (SPA) that billions of dollars have been lost due to the unauthorised copying of software worldwide. Put differently, "40 out of every 100 software applications in use worldwide are pirated" (Limayem, Khalifa & Chin, 2004, p.414). The 2006 study conducted by BSA estimated that South Africa's unauthorised copying rate is 36% and its unauthorised copying loss amounts to $212 million (BSA Report 2006). It is therefore important that research addresses the issue of unauthorised copying of software, especially in terms of the copying behaviours of people, their intentions to copy, their attitudes to copy, their reasons for copying.

The literature on unauthorised copying is said to be divided into three broad areas. These broad areas are unauthorised copying behaviour (Solomon & O'Brien, 1990; Wong, Kong & Ngai, 1990; Taylor & Shim, 1993), the attitudes to unauthorised copying of software (Reid, Thompson & Logsdon, 1992; Logsdon, Thompson & Reid, 1994; Ang & Lo, 1998) and the moral intention to use copied software (Thong & Yap,1998). It can therefore be said that unauthorised copying of software is a topic which researchers have attempted to address and it is no surprise that the concept of morality has crept into this notion as a means of explanation. However, it is the reason why morality has been expediently used to offer up an explanation for, not only copying behaviours, but also for the intentions to act and the attitudes to act, that is the crux of the present research.

This research primarily concerns Lawrence Kohlberg's levels of moral development which is a significant component of morality because Kohlberg "attempts to walk between the extremes of moral authority and empirical classification" (Carter in Modgil

& Modgil, 1984, p.9). That is to say that Kohlberg's theory seeks to explain morality by both cognitive-developmental theory (learning aspect) and scientific theory (knowledge aspect). Consequently, the present study evaluates Kohlberg's attempts to walk between the extremes by firstly *describing* the relationship between levels of moral development (describing the attitudes to unauthorised copying of software with respect to the individual's levels of moral development) and secondly, by *justifying* this relationship through the effect of knowledge of Intellectual Property laws (describing the effect of an individual's knowledge of Intellectual Property laws on the relationship between levels and attitudes).

The outline of this report is thus as follows: The second chapter of this study will present the background literature on Kohlberg's Theory of Moral development, unauthorised copying of software, Knowledge of Intellectual Property Laws and the relationship of each of these concepts to each other. Chapter three will outline the method of the study with reference to the nature of the research design adopted, the setting and the procedure, the details of the sample and the instruments used in assessing the hypotheses. Chapter four will present the results and findings of the study complete with all relevant statistical data, tables and graphs. Chapter Five will discuss the above results and will include the limitations of the study and recommendations for possible improvements in the future. Chapter six will make some general conclusions based on these findings.

CHAPTER TWO

LITERATURE REVIEW

In order to understand the relevance of this research and the impact it may have on future research, a review of the available literature relating to Kohlberg's Cognitive Theory of Moral Development, attitudes to unauthorised copying of software, and knowledge of Intellectual Property Laws is provided.

The literature, relating to the prevention of the unauthorised copying of computer software, according to Siponen & Vartainen (2004) has revealed the following:

- The use of punishments and psychological means of manipulating people have been overvalued;
- Present approaches which favour a psychological means of control may violate the autonomy of the individual if used haphazardly;
- More approaches aimed at higher stages of moral development are needed;
- No single approach covers all stages of moral development.

The current research presents these four issues as the basis of its exploration of unauthorised copying of software and as a consequence, presents solutions to these four central themes regarding moral development, which have surfaced from previous literature.

In the preceding chapter, the researcher drew out the aims of the present research. However, it was not clearly outlined as to why these aims are so important for the advancement of research of this kind. Fittingly, this research firstly aims to explore the possibility of a significant positive relationship between attitudes and moral development and in so doing, endeavours to use one single approach to cover all stages of Kohlberg's moral development. The secondary aim of this research is to consider the effect of knowledge of Intellectual Property laws on the relationship. In regarding knowledge of Intellectual Property laws as a factor of effect on the relationship, the research considers a stance which incorporates the higher stages of moral development because the higher stages (that is, stage five and six) are described as having "moral value which resides in conformity by the self to shared or shareable standards, rights or duties" (Bergling, 1981, p.37). Thus, it can be said that having knowledge of Intellectual Property laws is a shareable standard or duty and therefore implies a higher level of moral development on the part of the individual. This will be further discussed later in the chapter.

Therefore, this literature review considers all of the above arguments as per prior research in order to provide an in-depth line of reasoning for the use of Kohlberg's theory in studying unauthorised copying of software.

2.1 KOHLBERG'S THEORY OF MORAL DEVELOPMENT

"For nearly thirty years, Lawrence Kohlberg has amplified his cognitive-developmental theory of moralisation which has become prominent in the analysis of moral development and its consequent application to moral education" (Modgil & Modgil, 1986, p.1).

Kohlberg's theory can be found in countless areas of knowledge such as philosophy, psychology, education, religious studies, social and political studies as well as cross-cultural research. It can thus be said that Kohlberg, like so many others, has attempted to trace morality along a developmental continuum such that awareness is raised around the differences between child and adult reasoning for what is wrong and what is right. Of the numerous theorists who have examined moral development as a developmental progress, the work of Piaget has opened the door for further scientific investigations.

Piaget considered three areas of moral thinking and how they changed in the early part of an individual's life. He recorded these three areas as the nature and functioning of rules, the criteria on which moral judgements are based and punishment and justice. Piaget began his search for stages in moral development with the notion that "the core of morality is twofold, based on respect for the rules of the social order and a sense of justice" (Lickona, 1976, p.219). By using an interview technique with children, Piaget delved deep into a child's thinking by firstly reading a morally-based story which involved a morally-based situation and where the characters were children and then questioned the child about the moral event. As a result, Piaget concluded that the general features of the moral thinking in young children and that of older children were two distinctive approaches to *how* children thought out the problem. He termed the feature for young children moral realism (Piaget, 1932) and that of older children morality of cooperation (Piaget, 1932). The former is characterised by a belief that moral behaviours are moulded externally through the concept of authority, whilst the latter stems from a child's awareness of other people's points of view. Piaget (1932) argues that any child

will always exhibit a mixture of the two. Connected to this idea, was Piaget's cognitive development theory whereby the transition from each stage was governed by the social relationships and interactions of the child. Thus, he looked at the child's thinking in terms of being egocentric, whereby the child was important to him or herself to a level of operational thinking, which was motivated by social relationships. Thus, there was a move from 'me' to 'we'.

Piaget's original theories appear to have given way to more complex and highly developed representations of moral development and thus have opened the gateway for attempting to establish an empirical link between cognitive and moral development. Indeed, Kohlberg's theory is a loose extension of Piaget's cognitive-developmental approach because he views moral development as being strongly connected to cognitive ability as well as pursuing a stage-like movement determined by an individual's age and level of maturity.

On this note, it is necessary to take an in-depth look at Kohlberg's theory. In 1958, Lawrence Kohlberg reawakened interest in the subject of the origin and development of human morality. Kohlberg (1968) suggested that moral development is strongly related to cognitive ability and also follows a stage like progression determined by age and maturity. There are six stages that are subsequently divided into three levels.

"These stages of social development describe the level at which the person sees other people, interprets their thoughts and feelings, and sees their role or place in society. These stages are closely related to moral stages but are more general, since they do not

deal just with fairness and with choices of right and wrong. To make a judgement of fairness at a certain level is more difficult than to simply see the world at that level"

(Kohlberg, 1977, p.32).

It can thus be said that Kohlberg views moral development as a composite of general cognitive ability and social perception. Additionally, Kohlberg views moral development throughout a person's lifetime. These six stages and their respective levels are reflected in the following table:

Table 1. *Kohlberg's Theory of Moral Development*

LEVELS	**STAGES**	**DESCRIPTION**
I. Pre-Conventional Morality (age 4-10)	1. Punishment and Obedience Orientation	Avoidance of punishment
	2. Instrumental-Relativist Orientation	Individual's moral judgement is motivated by a need to satisfy his/her own desires, and occasionally the needs of others.
II. Conventional Morality (age 10-13)	3. 'Good Boy-Nice Girl' Orientation	One's moral judgments are motivated by a need to avoid rejection, disaffection, or disapproval from other people.
	4. Law and Order Orientation	'It is the law' argumentation; maintenance of social order such as legislation for its own sake.
III. Post-Conventional Morality (adolescence-adulthood)	5. Social Contract Legalistic Orientation	General individual rights and standards critically examined and agreed on by the whole society.
	6. Universal Ethical Principle Orientation	One's moral judgment is motivated by one's own conscience, in accordance with prescriptive universal and logical self-chosen ethical principles.

Adapted from: Kohlberg (1977)

The six stages are punishment and obedience orientation, instrumental-relativist orientation, good boy-nice girl orientation, law and order orientation, social-contract legalistic orientation and universal ethical principle orientation. The three levels, pre-conventional, conventional and post-conventional, consist of two stages each. Kohlberg's stage descriptions have undergone numerous adaptations over the years, but have fundamentally remained the same. To understand the individual stages, it is perhaps best if an examination of the three levels of moral development is undertaken.

Level One, also known as the pre-moral or pre-conventional level, is best understood in the age group of children under nine years old. At this level, morality is governed by individual punishments and rewards. Thus, rules are said to be external to the child and hence the child must obey them as he or she is unable to do anything to change them (Kohlberg, 1964).

Level two, also known as the Conventional level is governed by the presence of generally accepted social rules and codes of conduct. According to Kohlberg (1964), most adolescents and adults achieve this level by adhering to these accepted social rules and codes of conduct in a manner that is pleasing to the individual's family, group or nation. This means that rules are seen as necessary for the efficient progression of society and are obeyed for their own sake because they are representative of accumulated knowledge of a traditional power.

Level three; post-conventional or principled level is the highest level which an individual can attain. At this level, "there is a recognition that the moral principles conform to a higher authority than any society or group and pertain to general conceptions of human justice and equality" (Tudin & Straker, 1993, p.4). Thus, ethical principles are defined as independent from social custom.

In summary, Kohlberg (1976) expresses the three levels of moral development in terms of different types of relationships between the self and society's rules and expectations. In terms of level one, rules and social expectations are external to the self, whilst in level two, rules and expectations of others are internalised by the self and finally, if a person attains level 3, values and principles are self-chosen and are thus independent of the influence of others. As a result, most adolescents and adults will pass through to the conventional level; however, very few will reach the post-conventional level. This is because there is always some external factor which will influence a person's behaviour. For example, level two suggests that moral values exist as performing good or right roles. There is a need to please others and conform to what is happening in one's environment. As a consequence, progressing to a level three stage would require that moral judgement be motivated by an individual's *own* self-chosen values that are unbiased. Hence, very few people reach the post-conventional level as most rather conform to their socially-chosen values.

Hence, it is important to assess an individual on all three levels and through each of the six stages as it may be that an individual may not be able to 'move on' to another stage and so advance to the next level. This may be a product of issues of cognitive reasoning or personality, but "whether for reasons of egoistic motives, anxiety, behavioural incompetence, or simply a failure of will, people often do not live up to their principles" (Lickona, 1976, p.18). As a consequence, this human flaw gives rise to an interesting perspective for studying attitudes to unauthorised copying of software because of the motivations behind these attitudes. This is evident in the studies addressing unauthorised copying of software in terms of moral development. However, it is of utmost importance to first examine unauthorised copying of software individually before connecting it to moral development.

2.2 ATTITUDES TO UNAUTHORISED COPYING OF SOFTWARE

"During the past two decades, society has witnessed a rapid evolution in and adoption of computer technologies and the internet" (Gattiker & Kelley, 1999, p.233). This explosion of technology into the world has also resulted in ethical issues regarding computers and computer systems. Particularly, the unauthorised copying of software (also called softlifting and software pirating) is rapidly becoming a challenging issue.

In South Africa, people are becoming more computer literate and as a consequence of this, more and more South Africans are connecting to the Internet. As easy as it is to buy unauthorised copies of computer games and DVD movies off the street, it is becoming increasingly easier to gain access to unauthorised copies of computer software at the click

of a button. South Africa is rated at the bottom of the Top 20 countries involved in unauthorised copying, but the idea that South Africa forms part of the rating, raises ethical alarm bells. Questions arise around the motivations for why people copy software and of the numerous reasons, costs, economics and ease of being an elusive copier are amongst the top rated reasons. This is understandable in a country such as our own, where the economy is unpredictable, and even though we have an Intellectual Property Act which operates against unauthorised copying, the ease of 'getting away' with it, is quite embarrassing for those who are defenders of the current legislation. As a result, people should be made aware of the consequences of their actions, but at the same time, most remain unaware of the happenings in the cyber world and are unaware about what software is and indeed, many can genuinely say that they remain uninvited into the cyber world.

On this note, "software is the set of instructions which tell a computer what to do" (Forester & Morrison, 1990, p.27). Without software, a computer cannot function; it would be a body without a brain. As a consequence, all computers and therefore all computer users utilise software and the availability of it is extremely accessible for the purpose of computer functioning. However, this accessibility of computer software has created a social problem in the form of unauthorised copying of software. Unauthorised copying of software is the "making of unauthorised copies of software by individuals or businesses for resale or to use in the workplace, school or home" (Kini, Rominger & Vijayaran, 2001, p.1). According to Forester & Morrison (1990), unauthorised copying of software is an endemic social problem that is here to stay.

Research has shown that there are numerous reasons for the motivations and explanations for what would drive individuals to copy software (Kini, Ramakrishna &Vijayaran, 2003; Banerjee, Cronan & Jones, 1998; Peace, Galleta & Throng, 2003). These reasons (amongst those mentioned before) include subjective norms, punishment severity, punishment certainty and software costs (Peace et al, 2003). Subjective norms would include such things as attitudes or demographics, for example, the economic status of the individual or perhaps specific characteristics of the individual, such as his or her age, race, and educational level. Punishment severity and punishment certainty both have legal implications. Given that unauthorised software copying is illegal, factors such as professional ethical codes in a workplace and the adherence to the code would serve as a basis for presenting the consequences of an individual's actions if and when he or she were to copy software. In line with this, software costs and an income effect are both given as reasons to copy software as the individual may feel that software prices are too high and unaffordable. However, Glass and Wood (1996) report that other studies show substantial evidence that unauthorised copying is not an ethical problem. As a result, varying attitudes towards unauthorised copying are evident to different individuals.

Research conducted in Asia by Swinyard, Rinne and Kau (1990) suggests that it is not simple law breaking with which software companies are dealing. It is presumably something more as the study by Peace et al. (2003) suggests. This hints that the propensity to copy software is not just a legal matter but that perhaps something else, such as a moral factor is also in play. Although, it may be that there are other factors at

work. Though these other factors (such as socio-cultural factors, legal factors, personal factors) can be thought of as reasons for unauthorised copying of software, the underlying notion is that reasons cause individuals to have either positive or negative attitudes towards executing the behaviour. Thus, attitudes affect decisions in the actual implementation of the behaviour. Consequently, like dominoes, one prod can cause a chain reaction, for example, a financial reason whereby an organisation has a low budget and may not be able to afford the software. This may cause an individual in the organisation to be more forthright in his or her attitude about copying of software, which may be positive or negative. If positive, coupled with other reasons or on its own, the attitude may result in the actual copying of the software.

The following, adapted from Loch and Conger (1996) illustrates this:

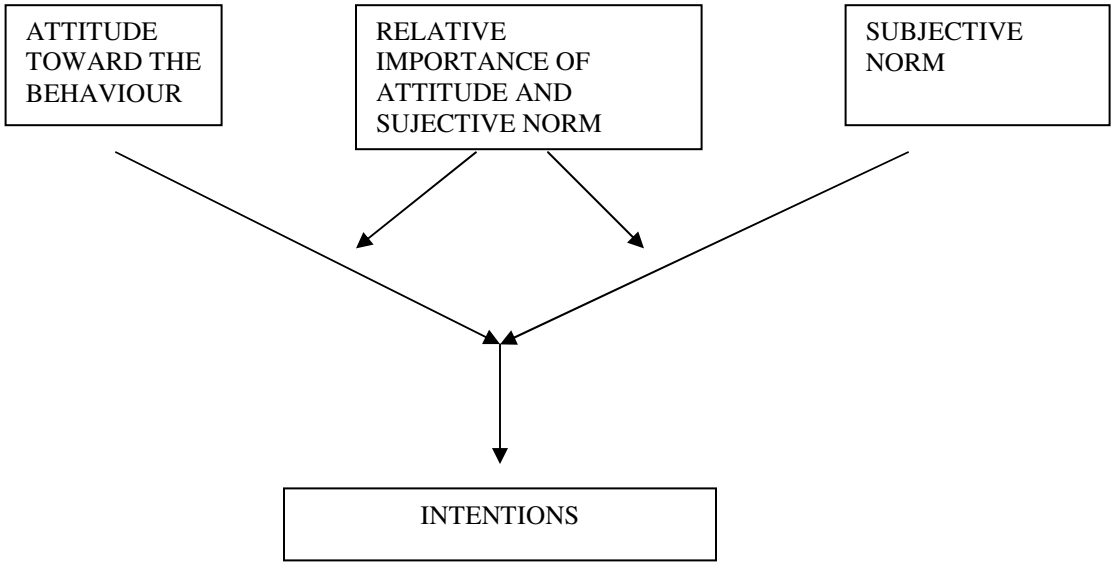


Figure a: Best-fit model for Ethical Computer Use

The above diagram is based on the Theory of Reasoned Action (TRA) which is often used to describe ethical decision-making behaviour and relates attitudes and social norms

to individual behavioural intentions. The Theory of Reasoned Action (TRA) states that the cause of unauthorised copying of software is peer norms and other social influences on individual's attitudes (Ajzen, 1985). Thus, "attitudes may be defined as enduring, learned predispositions toward responses directed at some object, person or group" (Loch & Conger, 1996, p.75) and social norms in the TRA refer to an individual's belief about what people who are important to that person believe about the individual's behaviour (Ajzen & Fishbein, 1980). Using the above diagram in the context of unauthorised copying of software, these can be demonstrated as follows:

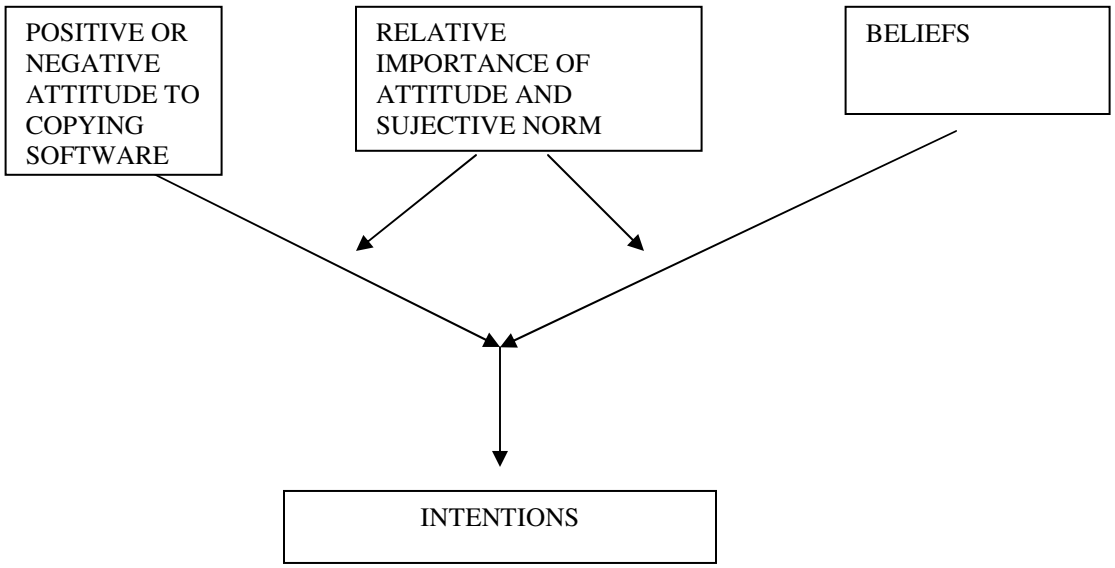


Figure b: Redefining the Best Fit Model

Thus, attitudes are affected by other variables and are situational and hence, the studies on attitudes can include almost any relevant variable which might help in explaining the attitudes of people.

It is thus clear that any study done on attitudes to unauthorised copying of software and Kohlberg's moral development will be distinctive, not only because the respondents will be diverse, but because the aims of the studies will be different. The relationship between the two has come under scrutiny since the introduction of computers into society and as a result numerous people have attempted to explore this relationship in differing forms, but not necessarily in the South African context.

One study (Schakowski, 1996) conducted in South Africa concerned the relationship between Moral Action and Moral Judgement through the medium of unauthorised copying of software whilst providing a detailed overview of unauthorised copying in the context of other variables, such as personality and socio-factor determinants. Schakowski (1996) found that respondents' moral reasoning scores were significantly positively correlated with the Piracy Behaviour Index which measures the software copying behaviours of individuals and that in the context of other factors, income proved to have a high predictive ability. The results thus showed that the relationship between Moral Judgement and Moral Action is not exclusively mediated by the level of moral development but by a host of internal and external factors. To date, no other studies like this can be found in the South African context.

International studies have produced differing results. The study conducted by Logsdon, Thompson and Reid (1994) examined the relationship between software copying and level of moral judgement where the results showed a high level of tolerance towards software copying and limited support (relatively weak relationship) for the hypothesis

that the higher one's level of moral judgement, the less likely that one will approve of or engage in unauthorised copying of software. In light of the findings of the latter study, it may have been that those results were found because of the convenience sampling used as students were used instead of full-time workers. The authors themselves write that the characteristics of the moral issue at hand, that is the unauthorised copying of software, may have affected the moral decision-making process. This is in relation to Jones' concept of moral intensity which emphasises the (1) magnitude of consequences, (2) social consensus, (3) probability of effect, (4) temporal immediacy, (5) proximity and (6) concentration of effect (Jones, 1991). Thus, if one were to look at the results of the study with regards to Jones' concept of moral intensity, one would see that "moral behaviour is not predicted on moral judgement alone" (Logsdon et al., 1994, p.853). Hence, other factors also influence moral behaviour. The study done by Kini, Rominger and Vijayaraman (2000) studied the relationship between the level of moral intensity and demographic variables and found that the propensity toward moral intensity is affected by general demographic variables and was not affected by the use of a computer, experience with computers, or task orientation. The relationship between moral intensity of individuals and the perceived moral intensity of their community, the students, employees, and the faculty was also explored. The results found showed some significance at each of the levels but were different for the different variables as well as the relationship between moral intensity of individuals and the community, students, employees and the faculty. Additionally a study done by Ramakrishna, Kini and Vijayaraman (2001) explored the impact of the immediate community on the development of moral intensity of students with regards to unauthorised copying of

software. The study done by Ramakrishna et al. (2001) relates to the present study if one relates it to the Theory of Reasoned Action because it explores the impact of the immediate community on the development of moral intensity of students. It connects to the present study as the impact of the immediate community can be noted by TRA as a social factor which impacts on the attitudes to unauthorised copying of software. Although, there have been other studies done on morality and unauthorised copying of software (Glass & Wood, 1996; Limayem, Khalifa & Chin, 2004; Rahim, Seyal & Rahman, 2001; Simpson, Banerjee & Simpson, 1994; Siponen & Vartainen, 2005), many of these have dealt with the motivating factors for why people copy software and are thus not mentioned in detail as the nature of this study is to assess attitudes and moral development and not causes of the relationship. In spite of this, those studies that have dealt with attitudes and the level of moral development have provided some opposing arguments such that some have found a negative relationship between attitudes and the level of moral development and others have found a positive relationship. It can thus be said that it is necessary to consider which factors may impact on the relationship. Hence, a secondary aim of this study is to describe the effect on the relationship by the presence of a person's knowledge of Intellectual Property laws.

2.3 KNOWLEDGE OF INTELLECTUAL PROPERTY LAWS

Forester and Morrison (1990) affirm that the idea of Intellectual Property has been around since the Middle Ages and as a consequence forms of it have evolved to produce current available forms of legal protection. Intellectual Property is defined as legally protected intellectual assets. Thus software falls into the scientific and industrial

categories as it is a piece of technology that has been scientifically developed and used in the industrial world. Consequently, software falls into the subdivision of patent law.

Within the borders of South Africa, Intellectual Property is protected by the South African Copyright Act 98 of 1978 (See Appendix One) as amended by Copyright Amendment Act, No. 56 of 1980, Copyright Amendment Act, No. 66 of 1983, Copyright Amendment Act, No. 52 of 1984, Copyright Amendment Act, No. 39 of 1986, Copyright Amendment Act, No. 13 of 1988, Copyright Amendment Act, No. 61 of 1989, Copyright Amendment Act, No. 125 of 1992, Intellectual Property Laws Amendment Act, No. 38 of 1997, and Copyright Amendment Act, No. 9 of 2002. The number of amendments to this act suggests that it has become important to protect intellectual assets as the world is evolving both positively such that there are constant new inventions, and negatively, such that crime is becoming more organised. In particular, Chapter One, Section 11 (B) concerns the nature of copyright in computer programmes. It states that:

Copyright in a computer program vests the exclusive right to do or authorize the doing of any of the following acts in the Republic:

(a) Reproducing the computer program in any manner or form;

(b) Publishing computer program if it was hitherto unpublished

(c) Performing the computer program in public;

(d) Broadcasting the computer program;

(e) Causing the computer program to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the computer program, and is operated by the original broadcaster;

(f) Making an adaptation of the computer program;

(g) Doing, in relation to an adaptation of the computer program, any of the acts specified in relation to the computer program in paragraphs (a) to (e) inclusive.

(h) Letting or offering or exposing for hire by way of trade, directly or indirectly a copy of the computer program.

(Copyright Act 98 of 1978)

The current Section 11(B) was amended by the insertion of Section 10 of Act No. 125 of 1992. This section was further amended by being substituted by Section 53 of Act No. 38 of 1997.

"The vast majority of existing literature on the subject is concerned with the technical and legislative aspects of preventing piracy" (Schakowski, 1996, p.43). The crux of any investigation into knowledge of Intellectual Property laws is whether individuals realise that unauthorised copying of software is a form of theft. This suggests that perhaps a code of ethics should be presented to people to make them aware of the situations in which laws are broken. Indeed, in some organisations, there are codes of ethics in place which assist in the prevention of unauthorised copying of software, but the majority of people may be unaware that they are committing a crime by copying the Intellectual Property of another. Also, it is becoming increasingly difficult to seize or police

perpetrators, especially internationally because of the implementation of an organisation called the Free Software Foundation to "promote the use of free software programs unencumbered by propriety restrictions on alterations, revisions, repairs and distribution" (Vaidhyanathan, 2001, p.155).

In addition to this, the unauthorised copying of software market is thriving because it has become easier to duplicate programmes using widely available tools such as DVD/CD writers. This has initiated another controversy around intellectual property which involves whether society should "mandate owner's rights pertaining to exclusive use and/or control of ideas" (Seale, Polakowski & Schneider, 1998, p.17). This is due to the ease at which Intellectual Property is copied and those that copy are not caught.

Knowledge of Intellectual Property laws takes into consideration the idea that along an individual's moral development path, there may be have been a 'learning' of IP laws. This suggests the individual's *awareness* of IP laws. Alerts for people to gain knowledge may have come in the form of ethical codes at work, actual safeguards on the software programmes that prevent copying of software, articles in the newspapers and news bulletins assisting in raising awareness about those who have been caught with unauthorised copies of software as well as advertising campaigns on television and in movie cinemas.

In short, it is an individual's awareness that unauthorised copying of software is illegal that defines knowledge. This awareness is understood by being given facts, rules and

regulations or having shared experiences regarding the copying of software. Studies which have considered certain factors as motivators for individuals to copy software have all mentioned the presence of IP laws, but there have been no significant or prominent studies which have concentrated on this factor as a variable which is important to computer ethics. Thus this study aims to do just that, to bring awareness and measure individual awareness of these laws.

From this information one is able to identify that there is a possible relationship between these variables. This study hopes to provide a greater understanding of these variables and the relationships between them in order to obtain a more in-depth description of the attitudes of South Africans towards unauthorised copying of software as well as providing a framework in which to build on moral development theory within the area of unauthorised copying of software. The aims are as follows:

(1) An attempt to describe the relationship between Kohlberg's levels of moral development and attitudes to unauthorised copying of software.
(2) Strives to describe the effect on this relationship, in the presence of an individual's knowledge of Intellectual Property laws.

On the whole, these aims attempt to address the notion that there should be more approaches aimed at higher stages of moral development as well as opposing the idea that no single approach covers all stages of moral development. Indeed, the present

study covers all six stages and therefore all three levels and is thus an approach that covers all the stages of moral development.

The research questions are as follows:

(1) There is a negative relationship between level of moral development and respondent attitudes to unauthorised copying of software.

(2) Knowledge of Intellectual Property laws moderates the relationship between the level of moral development and attitudes to unauthorised copying of software. It is proposed that people higher on knowledge of IP laws significantly strengthen the negative relationship between level of moral development and attitudes to unauthorised copying of software.

CHAPTER THREE

METHOD

The purpose of this chapter is to explain the research methods used in this study, and to indicate that they are appropriate for generating findings that are credible, dependable and which can be generalised to the population. The chapter begins with a description of the research design and sample, followed by a detailed explanation of the data collection procedures that were carried out in the research. In addition to this, a description of the instruments and measures that were utilised will be outlined, and the analysis techniques that were applied to the data will be addressed.

3.1 RESEARCH DESIGN

Welman and Kruger (2001) describe a research design as the plan according to which research respondents are obtained and information collected from them. Within the research design, a description is given for what the researcher is going to do with the respondents, with a view to reaching conclusions about the research problem. Thus, research design "addresses the planning of scientific enquiry, designing a strategy for finding out something" (Babbie & Mouton, 2004, p.72).

The aim of the present study is to establish the nature of the relationship between the level of moral development and descriptor attitudes to unauthorised copying of software and to examine Knowledge of Intellectual Property Laws as a Moderator of the Relationship between Levels of Moral Development and Attitudes to Unauthorised

Copying of Software. Hence, the study adopted a cross-sectional, correlational, non-experimental research design. It was advantageous to utilise this type of research design as it allowed for "different groups to be examined in terms of one or more variables at approximately the same time" (Welman & Kruger, 2001, p.86).

According to Rosenthal and Rosnow (1991), correlational research is a form of descriptive research which describes the degree of relation between variables. Cross-sectional design as described by Rosenthal and Rosnow (1991) is research that takes a slice of time and compares respondents on one or more variables simultaneously. This suggests that the researcher has no control over the independent variables because the research takes place at one specific moment in time and where the independent variables are presently applying their effects.

3.2 SAMPLE

The selection of respondents presented a significant challenge for the conduct of the present study as the number of computer-users within the South African population has increased considerably. Consequently, it proved to be difficult to select a representative sample using traditional probability sampling techniques such as *simple random sampling* where each member of the population has the same chance of being included in the sample and each sample of a particular size has the same probability of being chosen (Welman & Kruger, 2001, p.53), or *cluster sampling* where researchers "draw pre-existing heterogeneous groups called clusters, and all the members of the selected clusters are the eventual sample" (Welman & Kruger, 2001, p.60). It was thus decided

that non-probability sampling would be utilised in this study as a sampling procedure was needed that would "provide useful descriptions of the total population and where the sample of individuals would contain essentially the same variations that exist in the population" (Babbie & Mouton, 2004, p.169). In particular, convenience sampling was used as people with whom the researcher was acquainted were contacted and asked to assist with the collection of data. Consequently *snowball sampling* was used to survey the target population. The snowball sampling technique begins with a set of individuals who have a distinguishable set of characteristics which seem plausible to be included in the study. These individuals are then used to identify other individuals with similar characteristics and are likely to be possible candidates for the study. Thus, "like a rolling snowball, the group of potential respondents grows in size" (Welman & Kruger, 2001, p.63).

To begin with, the researcher identified possible individuals known to her with relevant computer usage backgrounds and as a consequence, the study was conducted within three medium-sized South African organisations. These organisations consisted of the advertising, Information Technology (IT), and the banking industries. All of the individuals in these organisations rely heavily on computers as a part of their daily work routine and thus, utilise a variety of software. In addition to the employees of these three organisations, identified as the main sample for the study, some members within the organisations continued to distribute the questionnaire to individuals in other industries and consequently, the sample includes all individuals who were willing to participate in the study and to whom the research reached.

A total of 150 respondents returned usable questionnaires. Of the 200 questionnaires distributed, 166 were returned to the researcher, but on evaluation, 16 were identified as incomplete and hence, omitted from the study. Thus a usable response rate of 75% was attained through snowballing. It was also noted that the 16 questionnaires may have returned incomplete documents because individuals may have felt uncomfortable with addressing their moral development.

It is evident from Table 2 (page 31) that of the sample, 43% (n=63) were male and 57% (n=84) were female. Three of the respondents did not identify their gender. The ages of the respondents were divided into six groups. These groupings were chosen as the researcher assumed there would be differences between the age groupings, given that they there are ten years between each grouping. The assumption was that within ten years other factors (e.g. environmental, economical and social factors) would impact on the moral development of these individuals. Of the first grouping, age 13-19 years old, one individual was identified, therefore for that particular age grouping, n=1 (0,67%), the second grouping, 20-29 years old, n=91 with 61%. The third grouping, 30-39 years old, n=28 (18%) whilst the fourth grouping, 40-49 years old, n=17 (11%). The fifth grouping, 50-59 years old, n=8 (5%) and the sixth grouping, 60-69 years old, n=4 (2%). The largest proportion of the sample fell between the 20-29 year old grouping. Thus there were significantly more respondents that were younger and fewer that were older.

With respect to population group, 16% (n=25) of the respondents were African, 14% (n=22) were Indian, 7% (n=11) were Coloured, 55% (n=55) were White and 6% (n=9) were identified as other. The table reflects that only 1% (n=2) had some form of high school training other than a matric, 16% (n=25) had a matric certificate, 17% (n=26) had completed a diploma course, 26% (n=40) held undergraduate degrees and 38% (n=57) had furthered their studies to postgraduate level.

In terms of employment status, 33% (n=50) were students. Of these, the majority of them were working part-time students. The sample consisted mostly of working part-time students as the researcher's contacts within the organisation were able to gain access to the part-time students more easily. The number of employed professionals amounted to 39% (n=59), 20% (n=31) were employed semi-professionals whilst the remainder of the sample were either self-employed (2%, n=4), unemployed (1%, n=1) or retired (1%, n=1). The sector statistics are as follows: 7% (n=10) belonged to the IT sector, 3% (n=5) were in the legal sector, 7% (n=11) worked in sales and marketing, whilst 5% (n=7) were in the technical sector. Another 5% (n=7) held a consulting occupation and 10% (n=15) were in education. Only 3% (n=5) were in the field of Engineering whilst 23% (n=33) were in the financial sector. 4% (n=6) worked in government and 3% (n=5) were in human resources. The remainder of the sample (25%, n=35) did not specify what sector they worked in and were simply noted as other.

Table 2. *Frequencies and Percentages of Respondents' Age, Gender, Race, Education, Occupation and Work Sector*

Variable	N	%
Age:		
13-19	1	<1
20-29	91	61
30-39	28	18
40-49	17	11
50-59	8	5
60-69	4	2
Gender:		
Male	63	43
Female	84	57
Race:		
African	25	17
Indian	22	15
Coloured	11	7
White	82	55
Other	9	6
Education:		
High School	2	1
Senior Certificate	25	16
Diploma	26	17
Undergraduate	40	27
Postgraduate	57	38
Occupation:		
Student	50	34
Employed/ Professional	59	40
Employed Semi/ Professional	31	21
Self-Employed	4	3
Unemployed	2	1
Retired	2	1
Sector:		
IT	10	7
Legal	5	3
Sales & Marketing	11	8
Technical	7	5
Consulting	7	5
Education	15	11
Engineering	5	3
Financial	33	24
Government	6	4
HR	5	3
Other	35	25

In an effort to gain more insight into the sample, further details regarding the respondents' computer usage was obtained. The number of years of computer use, the hours of computer use, the use of programming packages, office programs, technical software, computer games as well as internet use were all addressed. The statistics of these demographic details are found in Table 3.

It is evident from Table 3 that of the sample, 2% (n=3) had less than one year computer use and 12% (n=19) had between 1-5 years computer use. Those who had between 5-10 years use of the computer made up 35% (n=53) whilst 33% (n=50) had between 10-15 years computer use. Those who had 15-20 years computer use made up 11% (n=17) and the remainder 4% (n=7) have been using a computer for more than 20 years. With regards to the hours per day spent using a computer, 35% (n=53) of the respondents used a computer between 1-5 hours per day, 59% (n=89) used a computer between 5-10 hours per day, 4% (n=6) used their computers between 15 and 20 hours whilst only 1% (n=2) used their computers for more than 20 hours per day.

Computer users utilise various types of software and hence they do not all necessarily use packages, office programmes, technical software, computer games and the Internet. With regards to the use of programming packages such as C++, Java, Perl, etc, 60% (n=90) stated that they do not use programming packages, 18% (n=27) used programming packages less than once a week, 8% (n=12) indicated a use of once to a few times a week, 4% (n=6) indicated that they use programming packages up to two hours a

day and 7% (n=11) between two and eight hours a day. The remainder 2% (n=3) utilised these packages for more than 40 hours every week.

With regard to office program use, a majority of the respondents use this type of software for 2 to 8 hours a day (n=48, 32%), followed by respondents who only use office software once to a few times a week (n=40, 27%) whilst others only use office programs up to 2 hours a day (n=33, 22%). Only 11% (n=16) of respondents use office software for more than 40 hours a week and on the other end of the spectrum, 6% (n=9) do not use office programs at all.

Of the respondents, 52% (n=78) said that they did not use technical software whilst 20% (n=30) used technical software less than once a week. Those who stated their use as once to a few times a week made up 13% (n=20), 6% (n=9) as up to 2 hours every day, 7% (n=11) as between 2 and 8 hours every day and the remaining 1% (n=2) more than 40 hours every week. Those that did not play computer games accounted for 47% (n=71), whilst 31% (n=47) played games less than once a week. Those who played games once to a few times a week made up 14% (n=22), 3% (n=5) played between 2 and 8 hours every day and another 3% (n=5) played computer games for more than 40 hours every week.

The responses for weekly Internet use by respondents is once to a few times a week (n=53, 35%), followed by respondents who use the Internet for up to 2 hours a day (n=38, 25%), and 2 to 8 hours a day (n=29, 19%) respectively. In addition, 7% (n=11) of

respondents use the Internet for more than 40 hours a week whereas 5% (n=8) do not use the internet at all.

Table 3. *Frequencies and Percentages of Respondents Computer Usage*

Variable	N	%
Years of computer use:		
Less one year	3	2
1-5 yrs	19	13
5-10yrs	53	36
10-15yrs	50	34
15-20yrs	17	11
20+ yrs	7	5
Hours of computer use (per day):		
1-5 hrs	53	35
5-10hrs	89	59
15-20hrs	6	4
20+ hrs	2	1
Programming package use (weekly):		
Never	90	60
Less once a week	27	18
Once to few times	12	8
Up to 2hrs a day	6	4
2-8 hrs a day	11	7
More 40+ hrs	3	2
Office program use (weekly):		
Never	9	6
Less once a week	4	3
Once to few times	40	27
Up to 2hrs a day	33	22
2-8 hrs a day	48	32
More 40+ hrs	16	11
Technical software use (weekly):		
Never	78	52
Less once a week	30	20
Once to few times	20	13
Up to 2hrs a day	9	6
2-8 hrs a day	11	7
More 40+ hrs	2	1
Computer game use (weekly):		
Never	71	47
Less once a week	47	31
Once to few times	22	15
Up to 2hrs a day	5	3
2-8 hrs a day	5	3
More 40+ hrs	0	0
Internet use (weekly):		
Never	8	5
Less once a week	11	7
Once to few times	53	35
Up to 2hrs a day	38	25
2-8 hrs a day	29	19
More 40+ hrs	11	7

3.3 PROCEDURE

Permission to conduct this study was obtained via the researcher's contacts in the various organisations in and around the Johannesburg area. The researcher was telephonically contacted by the Human Resource Managers within each of the three organisations and arrangements were made to distribute and collect the questionnaires. Members of these organisations were then addressed by their Human Resource Managers and subsequently informed about the research such that employees were made aware that the study was being conducted entirely independently of the organisation.

Additionally, a participant information sheet (See Appendix Two) was attached to the questionnaires which briefly explained the study. Respondents were made aware that they would not be advantaged or disadvantaged in any way if they chose to complete or not to complete the questionnaire. It was also made aware to the respondents that completed questionnaires were to be regarded as informed consent and that their identities would be protected by sealing the envelopes and placing them into sealed boxes. This would ensure that no one but the researcher would have access to the results, which when the research had been completed, would be destroyed. Furthermore, the letter stated that the study was entirely anonymous and confidential and that respondents were not required to state their names or any identifying personal details.

Respondents were thus asked to fill out the questionnaires voluntarily, place it sealed in the accompanying envelope, and then to place it in the sealed box, which was left in the reception areas of the aforementioned organisations. A time limit of one week was given

to respondents to return the questionnaires, which were collected from the organisation by the researcher.

Once all the questionnaires were completed and returned, the data was captured and subsequently analysed.

3.4 INSTRUMENTS AND MEASURES

The questionnaire that was administered was an example of a "self-report method" (Rosenthal & Rosnow, 1991, p.178) and in particular, a structured questionnaire whereby respondents "read and answer the questions themselves" (Rosenthal & Rosnow, 1991, p.178). In order to answer the research questions, the following instruments were used:

3.4.1 GENERAL BIOGRAPHICAL QUESTIONNAIRE

A biographical blank was used to collect demographic information relating to the respondents' age, gender, race, education, occupation, work sector, years of computer use, hours of computer use, programming package use, use of office programmes, technical software, computer games and the Internet (See Appendix Three, Section One).

Previous research has attempted to identify differences in demographic characteristics (Dejoie et al., 1991; Paradice and Dejoie, 1991; Shim and Taylor, 1990). To this end, it is considered helpful to ascertain the relationship between demographic variables and attitudes to unauthorised copying of software. Thus, the data elicited from this

biographical blank will therefore be analysed in terms of its relevance to the research hypotheses and contribution to the results obtained.

3.4.2 ATTITUDES TO UNAUTHORISED COPYING OF SOFTWARE SCALE

The attitudes scale (See Appendix Three, Section Two) is adapted from a study conducted by Swinyard, Rinne and Kau (1990) and investigates attitudes to unauthorised copying of software. Reliability and validity scores were not reported in the original study, however for the present study internal reliability was calculated to be 0.76. Statements were measured on a 5-point Likert scale (1= Strongly Disagree, 2= Somewhat Disagree, 3= Indifferent, 4= Somewhat Agree, 5= Strongly Agree). A high score thus means that the individual has a positive attitude towards unauthorised copying of software.

The first three statements were taken from the Swinyard, Rinne & Kau (1990) study and the fourth was self-developed. The fourth statement was developed as the original question dealt with individual's actual unauthorised software copying behaviour. However, the aim of the study was not to delve into the respondents' actual copying behaviours and therefore was rephrased. Additionally, had the original item been kept, ethical issues would have emerged as individuals would have been questioned about their participation in illegal behaviour. If their responses were positive to the unauthorised copying of software, legal implications may have arisen. The total scale consisted of 4 items and of these 4 items; questions 2 and 4 were reverse scored.

3.4.3 LEVELS OF MORAL DEVELOPMENT SCALE

In order to assess respondents' level of moral development with respect to unauthorised copying of software, it was necessary to utilise a scale which reflected statements concerned with attitudes to unauthorised copying of software and at the same time, was able to reflect the individual's level of moral development. This scale (See Appendix 4, Section 3) was based on a scale developed by Kini, Ramakrishna and Vijayaraman (2003). There were twelve questions (two per stage) to this section divided into four questions for each level and two questions for each stage of moral development (See Table 4). Each pair of questions thus encompasses both a positive and negative position to his or her level of moral development.

The items are not exactly the same as those in the original study as some of the questions in the original study dealt with actual copying *behaviours* as opposed to the respondents attitudes. As was the case with the attitudes scale, items had to be redeveloped so as to only address the respondent's agreement or disagreement with statements which were specific to unauthorised copying of software. Also, the study done by Kini et al (2003) primarily focused on the first four stages of Kohlberg's moral development theory, whilst the current study focuses on all six stages. The questions for the last two stages, that is, the stages of social contract legalistic orientation and universal ethical principle orientation were all self-developed in accordance with the definitions of the stages presented by Kohlberg.

In terms of the development of the scale, the researcher and her supervisor undertook to study Kohlberg's theory of moral development, particularly focusing on the meaning of each of the stages as well as the definitions of the three levels. In generating the items, together with her supervisor, the researcher created as many items as possible that related to all six stages of moral development, namely, punishment and obedience orientation, instrument-relativist orientation, good boy-nice girl orientation, law and order orientation, social contract legalistic orientation and universal ethical principle orientation. Consequently, twelve statements assessing each of the stages were produced. No pre-test was conducted to validate the meanings of the statements and as a result, the researcher could not confirm the validity of the items before the respondents were asked to participate in the study. The internal reliability co-efficient was .91 and it was concluded that the scale was reliable.

The scale asked respondents to rate question items on a Likert-type scale of 1-5. Strongly disagree was equivalent to 1 and 5 was equivalent to strongly agree. A five-point Likert-type response scale was viewed as the most appropriate method to record the respondents' responses to the items. This type of response format offers respondents a range of choices to express themselves, while not overwhelming them with too many or too few choices. This is a relatively common response format for job and work-related attitudinal scales (Amatea, Cross, Clark & Bobby, 1986).

A high score on this scale therefore means that the individual has attained a high level on his or her total moral development. However, it is important to note that a high score on

the total scale does not necessarily mean a high moral development on each of the separate levels. It may thus be important to assess the replies on each item so as to gauge the level response. However, this is beyond the scope of the present research.

TABLE 4. *DIVISION OF STATEMENTS INTO STAGES AND LEVELS OF MORAL DEVELOPMENT*

STATEMENT	STAGE	LEVEL
I think it is okay to use unauthorised copies of software, as it is unlikely that you will be given a fine *	One – Punishment and Obedience	One – Pre Conventional
It is not okay to use unauthorised copies of software because it damages the profits of a software company.	One – Punishment and Obedience	One – Pre Conventional
I think it is alright to use unauthorised copies of software, as it is a way of avoiding high software prices. *	Two – Instrumental-Relativist	One – Pre Conventional
I think it is alright to use unauthorised copies of software if it helps me finish my work. *	Two – Instrumental-relativist	One - Pre Conventional
If I knew someone was making unauthorised copies of software I would try and make them feel guilty.	Three – Good Boy-Nice Girl	Two – Conventional
Making unauthorised copies of software for friends and family is fine if it helps them finish their work *	Three – Good Boy-Nice Girl	Two – Conventional
It is not alright to copy unauthorised software because that would be breaking the law	Four – Law and Order	Two – Conventional
Making unauthorised copies of software would be unfair to software companies.	Four – Law and Order	Two - Conventional
The unauthorised copying of software is wrong because it infringes on the rights of the copyright holder	Five – Social Contract Legalistic	Three – Post Conventional
It is okay to make unauthorised copies of software if it helps someone maintain a minimum standard of living. *	Five – Social Contract Legalistic	Three - Post Conventional
Unauthorised copying of software is not okay because it causes instability within the software market.	Six – Universal Ethical Principle	Three - Post Conventional
The unauthorised copying of software is okay because it is generally accepted in my community. *	Six – Universal Ethical Principle	Three - Post Conventional

***Reverse Scored**

3.4.4 KNOWLEDGE OF INTELLECTUAL PROPERTY LAWS SCALE

This scale (Appendix Three, Section Four) is based on the South African Copyright Act 98 of 1978 and examines respondents' knowledge of Intellectual Property Laws. It consists of 5 items, measured on a 5-point Likert scale (1= Strongly Disagree, 2= Somewhat Disagree, 3= Indifferent, 4= Somewhat Agree, 5= Strongly Agree). Respondents were asked to indicate their view towards these factual statements:

1. It is illegal to make copies of legally purchased software.
2. When you buy a copyrighted software programme, you usually only buy the right to use the software. The program itself remains the property of the publisher.
3. The current copyright Act is called the *Copyright Act. No 98 of 1978.*
4. Copyright shall be infringed by any person, not being the owner of the copyright, who, without the licence of such owner, does or causes any other to do or to authorise.
5. To protect one's Intellectual Property is to protect one's ideas.

This scale was developed in order to gain more insight into the South African population's knowledge of legislation. The internal reliability was reported as .60. A high score on the scale thus means that the individual has a considerable Knowledge of Intellectual Property Laws.

3.5 ANALYSIS

The following sections detail the statistical techniques utilised in the analysis of the results. Both univariate (correlation) and multivariate (moderated multiple regression) statistical procedures were necessary for the statistical analysis.

3.5.1 PRELIMINARY ANALYSIS

In analysing and interpreting the results of surveys, comparisons of basic descriptive data are usually conducted and are necessary to make the results meaningful (Welman & Kruger, 2001, p.208). To conduct the preliminary analysis, the researcher examined the means and frequencies of the variables as well as the internal reliabilities of the scales. Frequencies and percentages of the sample can be found in Table 1 (page 10) whilst averages and standard deviations are found in the following chapter.

Welman & Kruger (2001) define the mean as the arithmetical average and a frequency as how often a variable occurs. For the current research, both means and frequencies were calculated to assist the researcher in describing the sample. Internal consistency reliability shows the "degree to which all the items in a measurement/test measure the same attribute" (Welman & Kruger, 2001, p.141). For this study, Cronbach's alpha coefficient was selected to measure internal consistency as this is the most suitable and most popular approach for measuring internal consistency for scales with multiple option response scales in a single administration of the scale (Anastasi, 1988). A Cronbach alpha coefficient of 0.60 and above is regarded by some theorists as acceptable for the Social Sciences (McKennell, 1970), while others maintain that 0.75 is a more suitable cut off

point (Terre Blanche & Durrheim, 1999). The Cronbach alpha coefficient is particularly useful in research as it presents a complete assessment of the similarities among the items and therefore the researcher is able to interpret the results clearly.

3.5.2 SECONDARY ANALYSIS RESULTS

The secondary analysis consists of a Pearson Product-Moment Correlation Co-efficient to test hypothesis one and a moderated multiple regression to test hypothesis two.

Pearson's Rho quantitatively describes the existence of a linear relationship between two measured variables, and it has an index that ranges from -1.00 to +1.00 which reflects the degree and direction of the linear relationship between two variables (McCall, 1990) whilst a moderated multiple regression is the most common multivariate approach used for prediction in the behavioural sciences. It is considered a method for studying the effects and the magnitudes of the effects of more than one independent variable (predictor) on one dependent (criterion) variable using principles of correlation and regression (Kerlinger, 1986).

In the present study, a Pearson product-moment correlation was calculated in determining the degree of association between attitudes to unauthorised copying of software and level of moral development. This technique was a essential basis for performing further analyses and specifically assisted in finding a solution to hypothesis one. Moreover, according to Zedeck (1971) the use of a moderated multiple regression is to test various techniques such as step-wise regression, for the identification of moderator variables

where the dependent variable, the independent variable and the variable examined for its potential are continuous.

Correlational techniques are considered effective to measure a *relationship* as each individual is measured on two or more variables at about more or less the same time; and the relationship between these variables is then analysed. There are numerous ways in which to compute correlation coefficients, but the most common of these is the Pearson product-moment correlation co-efficient. The following equation, which is the Moderated Multiple Regression Formula, was used for this analysis:

$$y = \beta_0 + \beta_1 X IV + \beta_2 (moderator) + \beta_3 (moderator)\, IV + E$$

This is the moderated multiple regression where **y** was the relationship to be examined, **E** was the error and β_0 was the intercept.

Figure 1 depicts this concept.

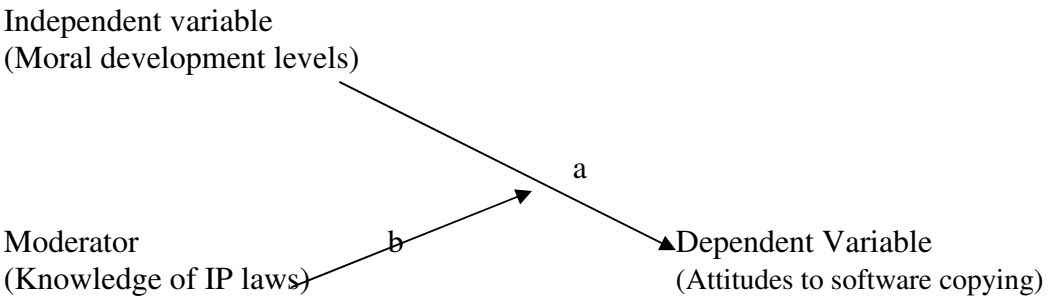


Figure 1. *Model of Moderator effect (adapted from Baron and Kenny, 1986)*

Moderation implies that "the causal relation between two variables changes as a function of the moderator variable. The statistical analysis must measure and test the differential effect of the independent variable on the dependent variable as a function of the moderator" (Baron, & Kenny, 1986, p. 1174).

The model in **Figure 1** has two paths (a and b) that feed into the outcome variable of attitudes towards unauthorised copying of software: namely the levels of moral development (path a) and knowledge of Intellectual Property laws as a moderator (path b). According to Baron and Kenny (1986) the moderator hypothesis holds up if the interaction between the independent variable (levels of moral development) and the moderator (knowledge of Intellectual Property laws) (path c) is significant. There may also be significant main effects for the level of moral development and knowledge of Intellectual Property laws (path a and path b), but it is not directly important conceptually to testing the moderator hypothesis.

The assumptions of moderated multiple linear regressions are:

- Linearity – regression analysis assumes that the relationships among variables are linear.
- Normality-the shape of the distribution is normal.
- Homoscedasticity- related to normality and is important for accuracy in regression.
- Measurement error- independent variables should be measured without error.
- Multicollinearity- multicollinearity exists when there are acceptably high degrees of association between two or more independent variables in a regression equation (Walsh, 1990).
- Error term-allows for variability in the sample

CHAPTER FOUR

RESULTS

The following chapter presents the results of the statistical analyses. The statistical analysis of the raw data was carried out on the computer programme SAS Enterprise Guide version 5. Means and frequencies of the demographic variables as well as the reliabilities of the measuring instruments will be addressed as an antecedent to examining the data further. Thereafter, the correlation analysis will be presented, following which the moderated multiple regression will be explored.

4.1 PRELIMINARY ANALYSIS RESULTS

4.1.1 MEAN AND FREQUENCIES

Table 2 in the preceding chapter summarised the demographic information of the sample. This information is of importance in order to understand the population from which the sample was taken. The table below reflects the means, standard deviations and minimum and maximum scores for each scale used and thus this information assists in providing important information about the variables in terms of the calculated averages (means), the measure of the spread of scores about the mean (standard deviation), as well as the minimum and maximum scores which can be summed for each particular variable

Table 5. *Means, Standard Deviations and Minimum and Maximum Scores*

Variable	N	Mean	Standard Deviation	Minimum	Maximum
ATTITUDES TO UNAUTHORISED COPYING OF SOFTWARE	150	13.63	3.71	4.00	24.00
TOTAL MORAL DEVELOPMENT	150	40.06	8.72	21.00	60.00
LEVEL 1- MORAL DEVELOPMENT	150	13.26	3.53	4.00	20.00
LEVEL 2 – MORAL DEVELOPMENT	150	13.26	3.09	6.00	20.00
LEVEL 3 – MORAL DEVELOPMENT	150	13.64	2.84	8.00	20.00
KNOWLEDGE OF INTELLECTUAL PROPERTY LAWS	150	3.68	0.86	1.00	5.00

Table 5 shows the results of the attitudes scale to range from a minimum score of 4 to a maximum score of 24. The mean was 13.63 while the standard deviation was 3.71. These results suggest that the mean for the attitudes scale is slightly skewed to the left, thus resulting in more people having negative attitudes towards software copying. The moral development total scores ranged from 21 to 60 with a mean of 40.06 and a standard

deviation of 8.72. These scores reflect a skewness to the right, thereby indicating a higher total moral development. Scoring on the individual level one moral development sub-scale ranged from a minimum score of 4 to a maximum score of 20, with a mean of 13.62 and a standard deviation of 3.53. These scores reflect a slight skewness to the right, suggesting that individuals are higher on level one moral development. The minimum score of level 2 was 6 and the maximum score was 20. The mean was 13.26 with a standard deviation of 3.09. The mean for level two indicates an almost normal distribution of scores and therefore the spread for level 2 moral development is neither more than average nor less than average. For level 3, the mean was 13.64, with a standard deviation of 2.84. Scores ranged from a minimum of 8 to a maximum of 20. The mean for level 3 was slightly skewed to the left, indicating a lower score for level 3 moral development. With regards to knowledge of Intellectual Property law scores ranged from 1 to 5, with a mean of 3.68 and a standard deviation of 0.86. This mean reveals a slightly skewed distribution of scores to the left; therefore this is a minor indication that more respondents had some knowledge of IP laws.

4.1.2 INTERNAL RELIABILITY ANALYSIS

Descriptive statistics and internal consistency reliability coefficients for each of the psychometric measures used in the study are found in Table 6. Reliability information includes the number of items in each scale, average inter-item correlations, minimum and maximum scores and Cronbach's alpha reliability coefficients.

As is evident from Table 6, the reliabilities for the scales for moral development and attitudes are high with alpha values of .91 and .76 respectively whilst the scale for knowledge of Intellectual Property laws is .60 and thus can be said to be satisfactory according to McKennell (1970). Moreover, the subscales of the moral development scale, that is each level's scale, have: a high alpha value of level 1=. 83, and reasonable alpha values for level 2=. 76 and level 3=. 73.

Table 6. *Internal Consistency Reliabilities of the Measuring Instruments*

Variable	**Scale**	**Items**	**Minimum and Maximum Scores**	**Alpha**
ATTITUDES TO UNAUTHORISED COPYING OF SOFTWARE	Newly Constructed	4	Min = 4 Max = 20	.76
LEVEL OF MORAL DEVELOPMENT (TOTAL SCALE)	Newly Constructed	12	Min =12 Max = 60	.91
LEVEL 1 OF MORAL DEVELOPMENT (Q1-Q4)	Newly Constructed	4	Min = 4 Max = 20	.83
LEVEL 2 OF MORAL DEVELOPMENT (Q5-Q8)	Newly Constructed	4	Min = 4 Max = 20	.76
LEVEL 3 OF MORAL DEVELOPMENT (Q9-Q12)	Newly Constructed	4	Min = 4 Max = 20	.73
KNOWLEDGE OF INTELLECTUAL PROPERTY LAWS	Newly Constructed	5	Min = 5 Max = 25	.60

Table 6 (a). *Number of Respondents for Particular Moral Development Items*

Moral Development Item (Question)	**Number of Respondents for Item**
I think it is okay to use unauthorised copies of software as it is unlikely that you will be given a fine (Level 1)	59
It is not okay to use unauthorised copies of software because it damages the profits of a software company (Level)	71
I think it is alright to use unauthorised copies of software, as it is a way of avoiding high software prices (Level 1)	56
I think it is alright to use unauthorised copies of software if it helps me finish my work (Level 1)	59
Making unauthorised copies of software would be unfair to software companies (Level 2)	>half the sample
The unauthorised copying of software is wrong because it infringes on the rights of the copyright holder	92

The above table reflects the response rate in terms of the number of individuals who agreed on the item. These items are thus those that had a fairly large response. They will be further discussed in a subsequent chapter.

4.2 SECONDARY ANALYSIS RESULTS

4.2.1 CORRELATION

Pearson product-moment correlation analyses were undertaken to test the degree of association between the independent and dependent variables. In so doing, the correlational analysis is directly answering hypothesis 1: There is a relationship between level of moral development and degree/quality of respondent attitudes to unauthorised copying of software. Moreover, such an analysis serves as a starting point for the

moderated multiple regression analysis required to test hypothesis 2: Knowledge of Intellectual Property (IP) Laws moderates the level of moral development-attitudes to unauthorised copying of software, such that people higher on knowledge of IP laws significantly strengthen the relationship between level of moral development and attitudes to unauthorised copying of software.

In addition, correlations were performed between each level of moral development and attitudes to unauthorised copying in order to determine the relationship between each level with respondent attitudes.

Results of the correlational analysis are presented in Table 7.

Table 7. *Pearson's Correlations for relationship between Levels of Moral Development and Attitudes*

MORAL DEVELOPMENT	**ATTITUDES**
LEVEL ONE	0.69*
LEVEL TWO	0.70*
LEVEL THREE	0.67*
TOTAL MORAL DEVELOPMENT	0.74*

* Correlation is significant at 0.05 level.

A summary of the relevant results follows:

Firstly, with respect to Hypothesis 1: There is a relationship between level of moral development and respondent attitudes to unauthorised copying of software – a moderate, correlation (r=. 74, α<0.05) was found between the variables. This means that the higher the level of moral development, the more negative the attitude to unauthorised copying of software.

Secondly, the results for the correlation between respondent attitudes and level 1 (r=. 70, α<0.05), level 2 (r=. 70, α<0.05) and level 3 (r=. 67, α<0.05) showed moderate correlations. This indicates that whilst together, all three totals produce a moderate correlation, individually, there is also a correlation between each of the levels and the attitudes of respondents. This thus means that there are relationships between each of the levels of moral development and the attitudes to unauthorised copying of software. These relationships can be described as: the higher the level of moral development, the more negative the attitudes to unauthorised copying of software within each level. This will be further discussed in the following chapter.

Thus, Table 7 indicates that there are a number of statistically significant relationships, the primary one being that of respondent attitudes to moral development in terms of the individual's total (that is, all three levels) moral development as well as significant relationships between respondent attitudes to each individual level.

Further correlations were also conducted between the total Knowledge of Intellectual Property Laws and the Total Moral Development as well as between the total Knowledge of Intellectual Property Laws and the total Attitudes to unauthorised copying of software. Results are depicted in the table below:

Table 7(a). *Pearson's Correlation for Relationship between Knowledge of Intellectual Property Laws and Moral Development and Attitudes*

	KNOWLEDGE OF INTELLECTUAL PROPERTY LAWS
TOTAL MORAL DEVELOPMENT	>0.002 (*Non-Significant)*
TOTAL ATTITUDES TO UNAUTHORISED COPYING OF SOFTWARE	-0.02 (*Non-Significant)*

* Correlation is significant at 0.05 level.

Results for these correlations reflected that there are non-significant relationships between Knowledge of Intellectual Property Laws and total Moral Development as well as between Knowledge of Intellectual Property Laws and total Attitudes to Unauthorised Copying of Software.

4.2.2 MODERATED MULTIPLE LINEAR REGRESSION

In order to establish if knowledge of Intellectual Property laws is a predictor that impacts the relationship between attitudes to unauthorised copying of software and levels of moral development, a moderated multiple regression was performed. The findings of this analysis are presented in Table 8.

Table 8. *Regression of P-values for Attitudes*

Variable	t-Value	Pr>t	R^2
LEVEL1-MORAL DEVELOPMENT	1.99	0.05*	0.56
LEVEL2-MORAL DEVELOPMENT	1.93	0.05*	0.56
LEVEL3-MORAL DEVELOPMENT	1.47	0.14	0.56
TOTAL MORAL DEVELOPMENT	-0.76	0.45	0.56
TOTAL KNOWLEDGE OF IP LAWS	0.34	0.73	0.56
INTERACTION (TOTAL MORAL DEVELOPMENT*TOTAL KNOWLEDGE OF IP LAWS	-0.34	0.74	0.56

*Correlation is significant at 0.05 level

Firstly, from conducting the initial tests on the regression model where $F_{6,143}=30.22$ and $\alpha<0.05$, it was concluded that at least one independent variable predicts the dependent variable. This was not done on a step-wise regression.

Secondly, each IV was tested for its predictive ability. Overall, the first level of moral development ($t=1.93$, $\alpha=0.05$) as well as the second level of moral development ($t=1.47$, $\alpha=0.05$) were shown to predict the DV and were therefore significant.

The strength of the regression was $R^2=0.56$, that is, it explains 56% of the relationship. However, the whole model is not significant. This shows a very strong regression and hence 56% of the relationship is explained by the combination of independent variables. Thus the form of the regression is positive.

In summary, the linear regression analysis for the regression model revealed that level 1 and level 2 moral development *were* adequate predictors of the relationship, accounting for 56% of the variance. This proved to be very interesting because it implies that the two lowest levels of moral development contribute most towards attitudes to unauthorised copying of software.

As the whole regression model was not significant, a Forward Step-Wise Regression was conducted. The forward step-wise regression allows for all the variables which are significant to the model to be entered. The step-wise regression then calculates which variable is most strongly related to the dependent variable. The step-wise regression thus stops generating calculations when variables are not strongly related to the dependent variable. The first stepwise regression entered knowledge of Intellectual Property Laws and levels of moral development as independent variables and attitudes to moral development as the dependent variable. This regression was done because in the regression conducted on the model, level 1 and level 2 were significant and level 3 did not appear to be significant. In looking at the moderating effect, all three levels had to be entered into the stepwise regression. Findings of this analysis are found in the table below.

Table 8(a). *Step-Wise Regression with Levels of Moral Development*

Step at which variable is entered	**Variable**	**F-value**	**Pr>F**	**R^2**
2	**LEVEL 1- MORAL DEVELOPMENT**	4.37	<.05	0.55
1	**LEVEL 2- MORAL DEVELOPMENT**	6.67	<.05	0.50
3	**LEVEL 3- MORAL DEVELOPMENT**	1.34	*Non-significant*	0.56

As with the regression model, level 3 results were non-significant in the stepwise regression. Therefore, Knowledge of Intellectual Property Laws has no effect on the relationship between attitudes and level 3 moral development. However, there is a significant effect on the relationship between level 1 and attitudes and level 2 and attitudes.

CHAPTER FIVE

DISCUSSION

5.1 DISCUSSION

The primary focus of this section is to provide possible explanations for the results obtained. While this section will link this study to past literature, it should also be recognised that although studies have been done on this topic before, there is no other study that specifically focused on individual's attitudes towards unauthorised copying of software and Kohlberg's theory of Moral Development with respect to all *three* levels. Additionally, the present study has focused on knowledge of Intellectual Property Laws as having an effect on the relationship between moral development and an individual's attitudes towards software copying. This chapter will discuss the results of this study in relation to the literature presented in the previous chapters. These results were derived from the research questions and the scales administered to measure the chosen variables.

This chapter first discusses the results of the analysis in the same order as presented in the previous chapter. The chapter then proceeds to discuss the limitations of this research and the theoretical and practical implications thereof. Lastly, it provides a conclusion for the study.

The relationship between the levels of moral development and attitudes to unauthorised copying of software is the primary focus of this study. The combination of Kohlberg's levels of moral development, attitudes to unauthorised copying of software and

knowledge of Intellectual Property laws has provided us with a significant tool with which to assess the factors which predict the relationship.

The results of the study clearly show that there is such a relationship (which is significant) ($r = .74$, $p<0.05$). This means that there is a positive inverse relationship between moral development and attitudes to unauthorised copying of software. Thus, this means that the higher the moral development, the more negative the attitude to unauthorised copying of software. Similar results have been found in recent studies where it was concluded that "it is more important to raise the level of moral intensity regarding software piracy" (Kini et al, 2000, p. 62) in order to decrease the quality of the attitude to software piracy whilst with regards to the study by Logsdon et al (1994) dissimilar results were found. Logsdon et al (1994) thus conclude that there is no relationship between moral development and attitudes to unauthorised copying of software and propose that there is another factor at play which influences the relationship. As the correlations for the present study are moderate, it can be concluded that the relationship is affected by something further and subsequently the present study also suggests that there is something other than an individual's ability to recognise software copying. The "moderate" state of the correlations may be accounted for because level 3 is not a predictor and therefore shares variance with both level 1 and level 2.

On this note, the present study also explored knowledge of IP laws as a moderator of the relationship between attitudes and moral development. A multiple regression analysis (in

particular a step-wise regression) was performed to predict the impact of the moderator (Knowledge of IP laws) on the relationship between moral development and attitudes. The regression yielded some interesting findings:

With regards to the forward stepwise regression, level one ($F=4.37$, $p<0.05$) and level two ($F=6.67$, $p<0.05$) variables turned out to be the strongest predictors of attitudes to unauthorised copying of software. It may be that respondents held more negative attitudes towards software copying with higher moral development total scores. However, in suggesting this, the researcher may be introducing an interpretive research strategy which means that the outcomes of the study are based on subjective interpretations, not on objective facts understood in the natural sciences (Siponen & Vartainen, 2004, p. 402). This then may be a limitation on the interpretation of the results and on the conclusive findings of the study. Knowledge of IP laws ($F=45.51$, $p<0.05$) had no predictive ability on the attitudes. This implies that there is something more which will moderate the relationship. Level 3 appeared not to be a strong predictor-this could suggest that level 3 has no impact on attitudes at all. However, level 3 did have a reasonable correlation with attitudes. This may have been because of the presence of multicollinearity. The reasons for this are surmised to be that those who responded have not yet reached a level 3 state of reasoning such that they are unable to separate their own consciences from their social environment. This directly relates to the Theory of Reasoned Action (Ajzen & Fishbein, 1980) where peers and the social environment impact on a person's attitude to software copying.

According to the definition, Level 1 is concerned with avoidance of punishment or a need to satisfy one's own needs and desires. This would be the most probable suggestion. However, it is likely that individuals may interpret punishment differently from others and this may account for those studies whereby level 1 is not a predictor. In reviewing the number of individuals who responded positively to the statements regarding avoidance of punishment, that is, the statements *I think it is okay to use unauthorised copies of software as it is unlikely that you will be given a fine* and the statement *It is not okay to use unauthorised copies of software because it damages the profits of a software company,* 59 individuals agreed to the first and 71 to the second. This suggests that people are very concerned with avoidance of punishment and hence level 1 *is* a predictor. However, level 1 is also concerned with the need to satisfy one's desires or needs. Thus responses to the statements *I think it is alright to use unauthorised copies of software, as it is a way of avoiding high software prices* and *I think it is alright to use unauthorised copies of software if it helps me finish my* work yielded a response rate of 56 individuals and 59 individuals respectively. In both cases, more than half the sample agreed with these statements. Again, it can be said that individuals are very concerned with satisfying their own needs and those of others. It can thus be said that Level 1 in its entirety is a suitable predictor as results lean towards the majority of people relating to these reasons as guiding their attitudes. A study conducted by Simpson et al. (1994) supports this result as it was found that personal gain factors significantly affect the tendency to copy software.

Level 2 can be defined as having generally accepted social rules and codes of conduct. Level 2 is defined by a good boy-nice girl orientation as well as an orientation towards law and order. Of the four statements for this level, the statement: *Making unauthorised copies of software would be unfair to software companies,* was agreed upon by more than half the sample, thus indicating an orientation towards both generally accepted rules and good-boy-nice girl orientation. In line with this, various studies support this level as being a suitable predictor as it is seen as the level in which the external environment plays an important role. In particular, the study by Ramakrishna et al. (2001) measured the impact of the immediate community on the development of moral intensity of students and found that "the moral intensity of any student is significantly related to the perceived level of moral intensity of other students" (Ramakrishna et al., 2001, p. 47). Although, the present study did not measure the impact of the environment as being a predictor of the relationship between attitudes to unauthorised copying of software and moral development, the implications of the results are that the environment, the influence of others, in terms of orientation towards authority, fixed rules and the maintenance of social order, are great. Furthermore, the literature analysis by Siponen and Vartainen (2004) revealed that of the studies conducted regarding moral development and software copying, the study by Kini et al. (2003) argued that "we should influence the local community to combat unauthorised copying, because individuals' moral intensity is influenced by the moral intensity of their immediate community" (Kini et al, 2003, p.68). Other studies (Rahim et al., 2001; Limayem et al., 1999; Taylor & Shim, 1993) also support this idea.

Level 3 proves to be more complicated. The results of the present study revealed that level 3 was not a predictor of the relationship between attitudes and unauthorised copying of software. However, most respondents agreed to the level 3 statements. In particular, the statement: *The unauthorised copying of software is wrong because it infringes on the rights of the copyright holder,* was agreed upon by 92 respondents, thus showing an orientation towards stage 5. Stage 5 is highlighted by the idea that the right action is defined in terms of general individual rights and standards which have been critically examined and agreed upon by the whole society. It appears that the respondents are orientated to stage 5, but level 3 is still not a predictor as it can be surmised that the influence at level 2 is somewhat stronger and respondents may still not have transitioned into the next level. There is however no empirical support for this supposition and thus "social norms may have a direct effect on self-reported piracy" (Seale et al, 1998, p.27).

Other reasons for the unlikely results are design reasons and multicollinearity reasons. In terms of the design of the scales, this concerns the Cronbach's Alpha which measure the reliability of the scales. The Knowledge scale produced an alpha of 0.60 which is weak but still acceptable. It however may have impacted on the scores produced as it may not be as understandable as thought to be and it appears not to be measuring what it is supposed to measure as validity may be deduced from an internal reliability score. According to Welman and Kruger (2001), a high reliability implies that the items in this instrument measure the same attribute and hence the alpha of 0.60 is not high and suggests that the knowledge items may not have been holding together coherently as a scale. With regards to the multicollinearity, correlations were performed on moral

development and knowledge of IP laws. The results yielded showed high degrees of association and it can be concluded that multicollinearity is a limiting factor in this study.

The general conclusion that can be drawn from these findings with respect to moral development is that, while it is assumed that external factors have a significant role to play in determining attitude, moral development is *the* most important factor. Even when variables are seen in isolation from one another (as in the case of simple correlation), level one and level two are important predictors of attitudes to unauthorised copying of software. The fact that knowledge of Intellectual Property laws had no effect on attitudes indicates that ignorance of the law cannot be used as an excuse. According to Schakowski (1996), people are well aware that it is against the law and thus know that unauthorised copying is wrong.

The results of this study have shown that level of moral development is an important aspect of any individual and that more research needs to be conducted such that the focus is on moral development and its different components as opposed to moral development as a cause of other factors.

With respect to unauthorised copying of software, results have shown that unauthorised copying of software is fast becoming an issue in South Africa. Legislation and the presence thereof have clearly no impact on the attitudes of people and hence, this demonstrates that legal means of controlling people's behaviour is ineffective. This is not due to incompetence on the part of law enforcement, but rather that those individuals

who do participate in copying of software are elusive and therefore there are problems in locating and identifying these individuals.

Knowledge of Intellectual Property laws has no effect on the relationship between levels of moral development and attitudes to unauthorised copying of software and thus it can be presumed that copying will not cease in the near future. It is thus important that software companies and software users find common ground so as to decrease the number of unauthorised copies of software. However, it is believed that unauthorised copying of software will "stay around in one form of another as long as there are computers that run software" (Schakowski, 1996, p.104).

In reviewing the results of this study in relation to previous studies and hence the literature review, the main implications of this study are summarised in the following argument.

Firstly, because Kohlberg wished to view moral development across a person's lifespan as well as across three levels, it was important for this study to thus review moral development in terms of the three suggested levels. The results concluded that across three levels, level 1 and level 2 were significant in representing a positive relationship between attitudes to unauthorised copying of software and levels of moral development. Thus the argument made that most people reach level 2 and may not necessarily reach level 3, was conclusive for this study. In examining the results in relation to previous studies, the present study demonstrates conclusive support for the study conducted by

Logsdon et al. (1994), which resulted in limited, weak support for the hypothesis that the higher one's level of moral judgement, the less likely that one will approve of or engage in unauthorised copying of software. An example of the support for the study conducted by Logsdon et al. (1994) was that the correlations conducted in this study did not become stronger with each increasing level, therefore drawing attention the idea that respondents may not necessarily be reaching level 3. However, it is likely that the scale was not sophisticated enough to validly assess moral development at level 3.

The present study also suggests support for the studies which explore the impact of other variables on the relationship between attitudes to unauthorised copying of software and level of moral development. Although knowledge of Intellectual Property laws does not impact on the relationship, it may be concluded that there are other factors which may affect the relationship and these other factors may be those explored in previous studies (Kini et al, 2000; Ramakrishna et al, 2001).

Consequently, this finding has provided a more in –depth analysis of the relationship between attitudes and levels or moral development and has provided a framework in which to build on moral development theory within the area of unauthorised copying of software.

5.2 LIMITATIONS

Although particular attention was paid to the content, literature, method and statistical analyses of this study, a number of limitations may be identified. One limitation focuses on the model which is at the centre of this study. However the major limitations of this study relate to methodological issues. These can be classified in the following categories: research design, sample, data collection, instruments, and data analysis.

The research design is cross-sectional, correlational and non-experimental as data was collected at one point in time, there was an exploration of a relationship between the variables and no variables were manipulated.

Firstly, correlational studies provide weak support for causal hypotheses and thus causal conclusions cannot be drawn (Rosenthal & Rosnow, 1991). Therefore, although the findings that emerged from the study contribute to the field of unauthorised copying of software and moral development, causality cannot be inferred. This is due to the aim of the research which was to examine attitudes to unauthorised copying and not the actual behaviours or even intentions to behave. Despite this disadvantage, the choice of using a cross-sectional design for this study was based upon practical considerations such as time constraints, financial limitations, difficulty in following up with such a large sample and the willingness of volunteers.

Secondly, although a non-experimental design is advantageous as it entails that the respondents do not undergo any form of manipulation, it can be a disadvantage as it minimises the amount of control the researcher has over third variables. There are many potential threats to internal validity (the degree to which conclusions can be supported by the design and procedures of the study) that may influence the results of the study (Rosenthal & Rosnow, 1991). For this particular study, they could include biographical details such as religious convictions or ethical policies within the workplace. The researcher therefore needs to be aware of these threats and guard against them, otherwise these threats may lead to third variable problems and problems due to causal direction ambiguity (Welman & Kruger, 2001).

Lastly, conducting research within a quantitative paradigm makes it difficult to do justice to the broad social and legal context of unauthorised copying in South Africa. Therefore using a multi-method approach may have been more beneficial as it also could have included qualitative measures which provide more in-depth data material.

The present study incorporated members of organisations where it was convenient to obtain a sample. While this contributes to the uniqueness of the study, the nature of this sample may introduce certain limitations.

Using a volunteer-based sample is disadvantageous as a result of volunteer bias. Volunteer bias is the systematic error resulting when respondents who volunteer, respond

differently from how those in the general population would have responded. The main concern is the similarity between those who volunteered to participate and the target population. There are specific reasons as to why some people agree to participate while others decline. Therefore it is possible that volunteering to participate in the study was somehow linked to certain variables (e.g. those that do not copy software) and this may influence the results of the study (Rosenthal & Rosnow, 1991).

The present study also used non-probability sampling as the sampling method. In non-probability sampling the probability that any person from a specific population will be selected is not known, therefore generalisability may be reduced.

The sample was only slightly biased towards females. This limits the extent to which the findings of this research may be generalised to other computer users. In obtaining the sample, several limitations occurred. For example access to organisations was limited due to time constraints on the part of the researcher as well as the unwillingness of other organisations to participate. Furthermore, although initially most of the individuals approached agreed to participate in the study, the response rate was comparatively poor.

A further limitation of the current study is its sample size. Although the sample size was adequate for the statistical procedures used in the current study, its size may have introduced problems with the statistical analyses. Sample size affects the power of a test, the smaller the sample the lower the power of a test. Due to this limitation caution was

used in the interpretation of data. In future studies a larger sample size would be more ideal.

Questionnaires used to gather data consisted solely of a self-report questionnaire. The subjective responses of respondents, although essential and relevant for this research, may also be problematic. This is due to the tendency of respondents to answer questions in what they consider to be a socially desirable manner. In addition, questionnaires were only administered in English. This may have posed a problem to second language speakers as they may have had trouble understanding certain questions and/or statements.

Questionnaires as a method of data collection is often criticised due to the lack of in-depth information in areas of concern. Data collection methods which are more qualitatively based can enhance the study more in that one may explain things in-depth as opposed to selecting a reply which is not an accurate reflection of the respondents' thoughts or behaviours.

In terms of the instruments used to measure each construct, they were all self-constructed and therefore the questionnaire may have been improved if a pilot questionnaire was first circulated in order to perfect the respondents' understanding of the questions. Also, the use of Likert-type scales posed a problem in that most people tend to select the neutral response and as a consequence, central tendency bias is introduced into the study. In terms of the common method variance, it may have been that the high correlations were a

product of using the same data collection method, that is, using a questionnaire instead of broadening the scope of collecting data; for example, an online questionnaire may have allowed more access to other people. Also, the common method variance is likely to have affected the type of measurement used, that is, the 5-point Likert scale where all information was rated in the same manner. It is likely that a change in the ratings may have offered more choice to the respondents and therefore results may have been different. . Moreover, the knowledge of intellectual property law scale may have reported such a low internal reliability as the facts used to construct the statements had been taken from an older edition of the act and therefore did not include the amendments. Thus, it may be surmised that respondents were unfamiliar with the older edition of the act and hence, chose to respond neutrally. Despite these limitations, fair reliabilities of the scales obtained in this study suggested that the respondents responded with some consistency and appeared to find the measures understandable. In terms of having the reliabilities of five variables, although the reliabilities for the attitudes scale and the moral development scale were quite high, the Knowledge scale was a little lower. This could indicate that the respondents may have known some sections of the Act, but not the whole Act. It also suggests that of those sections which were known by the respondents, most chose to be quite neutral in their responses.

Despite all these limitations, they did not overshadow the strengths of the study. The major strength of this study is that it was effective in introducing a measure which examined all six stages and hence all three levels of moral development. Although these results may not benefit the actual respondents, the findings make a helpful contribution to the field of unauthorised copying of software. In addition they help validate previous

literature and studies in this area and it therefore allows for a better conceptualisation of the motivators for software copying.

5.3 DIRECTIONS FOR THE FUTURE

Although the research undertaken in the present study has shed some light on some of the key areas with regards to unauthorised copying of software and moral development in South Africa, it is evident that future research is needed in these and other areas in order to understand these concepts more substantially. In particular, future research should examine the actual copying behaviours and intentions of the South African population so as to gauge the advancement (if any) of unauthorised copying of software within South Africa and in so doing, provide solutions to bring an end to such behaviours.

It is also suggested that future research studies adopt a longitudinal design to monitor the moral development of individuals in situations of unauthorised copying, but with specific training measures. For example, implementing a course on Intellectual Property laws as well as implementing computer ethic policies within the organisations. Longitudinal studies of responses to moral development and unauthorised copying would produce a deeper level of understanding of the factors which motivate individuals to copy. In addition, future studies may want to introduce a multi-method approach of assessment that enables the researcher to obtain a fuller understanding and analysis of the gathered data (Welman & Kruger, 2001). Using both qualitative and quantitative research methods, accounts for the weaknesses of either method in isolation and it therefore

improves the overall research design and ensures greater reliability and validity of the data.

Although there are numerous, hypothesised reasons for the effect of other influences, future research would contribute a great deal to the field of psychology if these influences were to be explored more fully and more deeply. Specifically, a breakdown of these other variables and their components would provide insight into the differences between people.

Lastly, in order to confirm the data of the present study and increase generalisability of results, future studies should replicate this study on a larger sample.

CHAPTER SIX

CONCLUSION

The present study attempted to provide further support for research in the area of moral development and unauthorised copying of software. In addition to this, the researcher set out to delve into previous findings in this research area.

Results from the current study revealed that there is a significant positive relationship between attitudes to unauthorised copying of software and some levels of moral development. Furthermore, statistical analysis showed that knowledge of Intellectual Property laws does not moderate this relationship. As such, the results have suggested that there is far more to moral development and unauthorised copying of software than present research has thus far explored.

Thus, with reference to the findings from previous studies, this study has revealed that:

- Legal means of manipulation (knowledge of laws) has no effect on individual's attitudes towards unauthorised copying of software.
- It is worthwhile to utilise an approach which includes the higher stages of moral development as it provides an entire overview of the moral development of an individual.
- The use of this self-developed scale is an example of one approach which covers all stages of moral development, as has been shown by high internal reliability.

- Finally, knowledge of Intellectual Property laws is a psychological means of control, but it does not affect the autonomy of the individual.

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APPENDIX ONE

THE SOUTH AFRICAN COPYRIGHT ACT 98 OF 1978

COPYRIGHT ACT
NO. 98 OF 1978
[View Regulation]
[ASSENTED TO 20 JUNE, 1978]
[DATE OF COMMENCEMENT: 1 JANUARY, 1979]
(except ss. 1, 39, 40, on 30 June, 1978 and s. 45 to be proclaimed)
(Afrikaans text signed by the State President)
as amended by
Copyright Amendment Act, No. 56 of 1980
Copyright Amendment Act, No. 66 of 1983
Copyright Amendment Act, No. 52 of 1984
Copyright Amendment Act, No. 39 of 1986
Copyright Amendment Act, No. 13 of 1988
Copyright Amendment Act, No. 61 of 1989
Copyright Amendment Act, No. 125 of 1992
Intellectual Property Laws Amendment Act, No. 38 of 1997
Copyright Amendment Act, No. 9 of 2002
ACT
To regulate copyright and to provide for matters incidental thereto.
ARRANGEMENT OF SECTIONS
1. Definitions
CHAPTER 1
COPYRIGHT IN ORIGINAL WORKS
2. Works eligible for copyright
3. Copyright by virtue of nationality, domicile or residence, and duration of copyright
4. Copyright by reference to country of origin
5. Copyright in relation to the state and certain international organizations
6. Nature of copyright in literary or musical works
7. Nature of copyright in artistic works
8. Nature of copyright in cinematograph films
9. Nature of copyright in sound recordings
9A. Royalties
10. Nature of copyright in broadcasts
11. Nature of copyright in programme-carrying signals
11A. Nature of copyright in published editions
11B. Nature of copyright in computer programs
12. General exceptions from protection of literary and musical works
13. General exceptions in respect of reproduction of works
14. Special exception in respect of records of musical works
15. General exceptions from protection of artistic works
16. General exceptions regarding protection of cinematograph films
17. General exceptions regarding protection of sound recordings
18. General exceptions regarding protection of broadcasts
19. General exceptions from protection of programme-carrying signals
19A. General exceptions regarding protection of published editions

19B. General exceptions regarding protection of computer programs
20. Moral rights
21. Ownership of copyright
22. Assignment and licences in respect of copyright
CHAPTER 2
INFRINGEMENTS OF COPYRIGHT AND REMEDIES
23. Infringement
24. Action by owner of copyright for infringement
25. Rights of action and remedies of exclusive licensee and exclusive sublicensee
26. Onus of proof in proceedings
27. Penalties and proceedings in respect of dealings which infringe copyright
28. Provision for restricting importation of copies
CHAPTER 3
COPYRIGHT TRIBUNAL
29. Establishment of Copyright Tribunal
30. General provisions as to jurisdiction of tribunal
31. Reference of licence schemes to tribunal
32. Further reference of scheme to tribunal
33. Applications to tribunal
34. Diffusion service
35. Effect of orders of tribunal, and supplementary provisions relating thereto
36. Appeals
CHAPTER 4
EXTENSION OR RESTRICTION OF OPERATION OF ACT
37. Application of Act to countries to which it does not extend
38. . . . . .
CHAPTER 5
MISCELLANEOUS PROVISIONS
39. Regulations
40. Advisory committee
41. Savings
42. . . . . .
43. Application to work made before commencement of Act
44. Time when a work is made
45. Regulation and control of circulation, presentation or exhibition of works
45A. . . . . .
46. Repeal of laws
47. Short title and commencement
Schedule
1. Definitions.
(1) In this Act, unless the context otherwise indicates—
“adaptation”, in relation to—
(a) a literary work, includes—
(i) in the case of a non-dramatic work, a version of the
work in which it is converted into a dramatic work;
(ii) in the case of a dramatic work, a version of the work in
which it is converted into a non-dramatic work;
(iii) a translation of the work; or
(iv) a version of the work in which the story or action is
conveyed wholly or mainly by means of pictures in a
form suitable for reproduction in a book or in a

newspaper, magazine or similar periodical;
(b) a musical work, includes any arrangement or transcription of the work, if such arrangement or transcription has an original creative character;
(c) an artistic work, includes a transformation of the work in such a manner that the original or substantial features thereof remain recognizable;
(d) a computer program includes—
(i) a version of the program in a programming language, code or notation different from that of the program; or
(ii) a fixation of the program in or on a medium different from the medium of fixation of the program;
[Para. (d) added by s. 1 (a) of Act No. 125 of 1992.]
“arbitration” means arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965);
“artistic work” means, irrespective of the artistic quality thereof—
(a) paintings, sculptures, drawings, engravings and photographs;
(b) works of architecture, being either buildings or models of buildings; or
(c) works of craftmanship not falling within either paragraph (a) or (b);
[Para. (c) substituted by s. 1 (a) of Act No. 66 of 1983 and by s. 1 (b) of Act No. 125 of 1992.]
“author”, in relation to—
(a) a literary, musical or artistic work, means the person who first makes or creates the work;
(b) a photograph, means the person who is responsible for the composition of the photograph;
(c) a sound recording, means the person by whom the arrangements for the making of the sound recording were made;
[Para. (c) substituted by s. 1 (c) of Act No. 125 of 1992.]
d) a cinematograph film, means the person by whom the arrangements for the making of the film were made;
(e) a broadcast, means the first broadcaster;
[Para. (e) substituted by s. 1 (c) of Act No. 125 of 1992.]
(f) a programme-carrying signal, means the first person emitting the signal to a satellite;
[Para. (f) substituted by s. 1 (c) of Act No. 125 of 1992.]
(g) a published edition, means the publisher of the edition;
[Para. (g) added by s. 1 (a) of Act No. 52 of 1984.]
(h) a literary, dramatic, musical or artistic work or computer program which is computer-generated, means the person by whom the arrangements necessary for the creation of the work were undertaken;
[Para. (h) added by s. 1 (d) of Act No. 125 of 1992.]
(i) a computer program, the person who exercised control over the making of the computer program;
[Para. (i) added by s. 1 (d) of Act No. 125 of 1992.]
“broadcast”, when used as a noun, means a telecommunication service of

transmissions consisting of sounds, images, signs or signals which—
(a) takes place by means of electromagnetic waves of frequencies of lower than 3 000 GHz transmitted in space without an artificial conductor; and
(b) is intended for reception by the public or sections of the public,
and includes the emitting of programme-carrying signals to a satellite, and, when used as a verb, shall be construed accordingly;
[Definition of "broadcast" substituted by s. 1 (e) of Act No. 125 of 1992 and by s. 50 (a) of Act No. 38 of 1997.]
"broadcaster" means a person who undertakes a broadcast;
[Definition of "broadcaster" substituted by s. 50 (b) of Act No. 38 of 1997.]
"building" includes any structure;
"cinematograph film" means any fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of images capable, when used in conjunction with any other mechanical, electronic or other device, of being seen as a moving picture and of reproduction, and includes the sounds embodied in a sound-track associated with the film, but shall not include a computer program;
[Definition of "cinematograph film" substituted by s. 1 (f) of Act No. 125 of 1992 and by s. 50 (c) of Act No. 38 of 1997.]
"collecting society" means a collecting society established under this Act;
[Definition of "collecting society" inserted by s. 1 (a) of Act 9 of 2002.]
"computer program" means a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result;
[Definition of "computer program" inserted by s. 1 (g) of Act No. 125 of 1992.]
"copy" means a reproduction of a work, and, in the case of a literary, musical or artistic work, a cinematograph film or a computer program, also an adaptation thereof: Provided that an object shall not be taken to be a copy of a work of architecture unless the object is a building or a model of a building;
[Definition of "copy" substituted by s. 1 (h) of Act No. 125 of 1992.]
"copyright" means copyright under this Act;
"Corporation" . . . . . .
[Definiton of "Corporation" deleted by s. 50 (d) of Act No. 38 of 1997.]
"country" includes any colony, protectorate or territory subject to the authority or under the suzerainty of any other country, and any territory over which trusteeship is exercised;
"derived signal" is a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there have been one or more intervening fixations;
"diffusion service" means a telecommunication service of transmissions consisting of sounds, images, signs or signals, which takes place over wires or other paths provided by material substance and intended for reception by specific members of the public; and diffusion shall not be deemed to constitute a performance or a broadcast or as causing sounds, images, signs or signals to be seen or heard; and where sounds, images, signs or signals are displayed or emitted by any receiving apparatus to which they are conveyed by diffusion in such manner as to constitute a performance or a causing of sounds, images, signs or signals to be seen or heard in public, this shall be deemed to be effected by the operation of the receiving apparatus;

“distribution”, in relation to a programme-carrying signal, means any operation by which a distributor transmits a derived signal to the general public or any section thereof;
[Definition of “distribution” substituted by s. 1 (i) of Act No. 125 of 1992.]
“distributor” in relation to a programme-carrying signal, means the person who decides that the transmission of the derived signal to the general public or any section thereof shall take place;
“dramatic work” includes a choreographic work or entertainment in dumb show, if reduced to the material form in which the work or entertainment is to be presented, but does not include a cinematograph film as distinct from a scenario or script for a cinematograph film;
“drawing” includes any drawing of a technical nature or any diagram, map, chart or plan;
[Definition of “drawing” substituted by s. 1 (b) of Act No. 66 of 1983.]
“emitted signal” means a signal which goes to a satellite;
[Definition of “emitted signal” substituted by s. 1 (k) of Act No. 125 of 1992.]
“engraving” includes any etching, lithograph, woodcut, print or similar work, but does not include a photograph;
“exclusive licence” means a licence authorizing a licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would, apart from the licence, be exercisable exclusively by the owner of the copyright; and “exclusive licensee” shall be construed accordingly;
“infringing copy”, in relation to—
(a) a literary, musical or artistic work or a published edition, means a copy thereof;
(b) a sound recording, means a record embodying that recording;
(c) a cinematograph film, means a copy of the film or a still photograph made there from;
(d) a broadcast, means a cinematograph film of it or a copy of a cinematograph film of it or a sound recording of it or a record embodying a sound recording of it or a still photograph made there from; and
(e) a computer program, means a copy of such computer program,being in any such case an article the making of which constituted an infringement of the copyright in the work, recording, cinematograph film, broadcast or computer program or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in the Republic;
[Definition of “infringing copy” substituted by s. 1 (l) of Act No. 125 of 1992.]
“judicial proceedings” means proceedings before any court, tribunal or person having by law power to hear, receive and examine evidence on oath;
“licence” . . . . . .
[Definition of “licence” deleted by s. 1 (m) of Act No. 125 of 1992.]
“licence scheme”, for the purposes of Chapter 3, in relation to licences of any description, means a scheme prepared by one or more licensing bodies, setting out the classes of cases in which they are willing, or the person on whose behalf they act is willing, to grant licences of that description, and the charges, if any, and terms and conditions subject to which licences may be

granted in those classes of cases, and includes anything in the nature of such a scheme, whether described as a scheme or as a tariff or by any other name;
[Definition of “licence scheme” substituted by s. 1 (n) of Act No. 125 of 1992.]
“licensing body” . . . . . .
[Definition of “licensing body” deleted by s. 1 (o) of Act No. 125 of 1992.]
“literary work” includes, irrespective of literary quality and in whatever mode or form expressed—
(a) novels, stories and poetical works;
(b) dramatic works, stage directions, cinematograph film scenarios and broadcasting scripts;
(c) textbooks, treatises, histories, biographies, essays and articles;
(c) encyclopaedias and dictionaries;
(e) letters, reports and memoranda;
(f) lectures, speeches and sermons; an
(g) tables and compilations, including tables and compilations of data stored or embodied in a computer or a medium used in conjunction with a computer, but shall not include a computer program;
[Para. (g) substituted by s. 50 (e) of Act No. 38 of 1997.]
[Definition of “literary work” substituted by s. 1 (p) of Act No. 125 of 1992.]
“Minister” means the Minister of Trade and Industry;
[Definition of “Minister” substituted by s. 1 (c) of Act No. 66 of 1983, by s. 1 of Act No. 13 of 1988 and by s. 1 (b) of Act 9 of 2002.]
“musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;
[Definition of “musical work” inserted by s. 1 (q) of Act No. 125 of 1992.]
“performance” includes any mode of visual or acoustic presentation of a work, including any such presentation by the operation of a loudspeaker, a radio, television or diffusion receiver or by the exhibition of a cinematograph film or by the use of a record or by any other means, and in relation to lectures, speeches and sermons, includes delivery thereof; and references to “perform” in relation to a work shall be construed accordingly: Provided that “performance” shall not include broadcasting or rebroadcasting or transmitting a work in a diffusion service;
[Definition of “performance” substituted by s. 1 (r) of Act No. 125 of 1992.]
“photograph” means any product of photography or of any process analogous to photography, but does not include any part of a cinematograph film;
“plate” includes any stereotype, stone, block, mould, matrix, transfer, negative, record, disc, storage medium or any version of a work of whatsoever nature used to make copies;
[Definition of “plate” substituted by s. 1 (s) of Act No. 125 of 1992.]
“prescribed” means prescribed by or under this Act;
“programme”, in relation to a programme-carrying signal, means a body of live or recorded material consisting of images or sounds or both, embodied in a signal;
[Definition of “programme” substituted by s. 1 (t) of Act No. 125 of 1992.]
“programme-carrying signal” means a signal embodying a program which

is emitted and passes through a satellite;
[Definition of “programme-carrying signal” inserted by s. 1 (u) of Act No. 125 of 1992.]
“prospective owner”, in relation to copyright, means a person who shall be entitled to the copyright, wholly or partially, in a work in which copyright does not yet subsist or whose entitlement to the copyright which does exist shall become effective upon a future event;
“published edition” means the first print by whatever process of a particular typographical arrangement of a literary or musical work;
[Definition of “published edition” inserted by s. 1 (c) of Act No. 52 of 1984.]
“qualified person” means a qualified person within the meaning of section 3 (1);
“rebroadcasting” means the simultaneous or subsequent broadcasting by one broadcaster of the broadcast of another broadcaster;
[Definition of “rebroadcasting” substituted by s. 50 (f) of Act No. 38 of 1997.]
“record” means any disc, tape, perforated role or other device in or on which sounds, or data or signals representing sounds, are embodied or represented so as to be capable of being automatically reproduced or performed therefrom;
[Definition of “record” substituted by s. 50 (g) of Act No. 38 of 1997.]
“Registrar” means the Registrar of Copyright, who shall be the person appointed as Registrar of Patents under section 7 of the Patents Act, 1978;
“regulation” means a regulation made under this Act;
“reproduction”, in relation to—
(a) a literary or musical work or a broadcast, includes a reproduction in the form of a record or a cinematograph film;
(b) an artistic work, includes a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form;
(c) any work, includes a reproduction made from a reproduction of that work;
[Para. (c) added by s. 1 (d) of Act No. 66 of 1983.]
and references to “reproduce” and “reproducing” shall be construed accordingly;
“satellite” means any device in extra-terrestrial space capable of transmitting signals;
“signal” means an electronically generated carrier capable of transmitting programmes;
“sculpture” includes any cast or model made for purposes of sculpture;
“sound recording” means any fixation or storage of sounds, or data or signals representing sounds, capable of being reproduced, but does not include a sound-track associated with a cinematograph film;
[Definition of “sound recording” substituted by s. 1 (v) of Act No. 125 of 1992 and by s. 50 (h) of Act No. 38 of 1997.]
“this Act” includes the regulations;
“work” a work contemplated in section 2;
[Definition of “work” inserted by s. 1 (w) of Act No. 125 of 1992.]
“work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors;
“writing” includes any form of notation, whether by hand or by printing, typewriting or any similar process.

(2) Any reference in this Act to a sound-track associated with a cinematograph film shall be construed as a reference to any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded or which is issued by the author of the film for use in conjunction with such an article.
(2A) Any reference in this Act to the doing of any act in relation to any work shall, unless the context otherwise indicates, be construed as a reference also to the doing of any such act in relation to any substantial part of such work.
[Sub-s. (2A) inserted by s. 1 of Act No. 56 of 1980.]
(3) The provisions of this Act shall with reference to any act or omission outside the territorial limits of the Republic by or on any ship or aircraft registered under any law in the Republic apply in the same manner as it applies with reference to acts or omissions within the territorial limits of the Republic.
(4) Notwithstanding the provisions of paragraph (i) of the definition of "author" in subsection (1), the author of a computer program made before the date of commencement of the Copyright Amendment Act, 1992, shall be deemed to be the person who first made or created the program, but if such computer program is original and has been published by a qualified person, such person shall be presumed to be the owner of the copyright subsisting in the computer program concerned, unless the contrary is proved.
[Sub-s. (4) added by s. 1 (x) of Act No. 125 of 1992.]
(5) For the purposes of this Act the following provisions shall apply in connection with the publication of a work:
(a) Subject to paragraph (e), a work shall be deemed to have been published if copies of such work have been issued to the public with the consent of the owner of the copyright in the work in sufficient quantities to reasonably meet the needs of the public, having regard to the nature of the work.
(b) Publication of a cinematograph film or sound recording is the sale, letting, hire or offer for sale or hire, of copies thereof.
(c) A publication shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere within a period of 30 days.
(d) Publication shall not include—
(i) a performance of a musical or dramatic work, cinematograph film or sound recording;
(ii) a public delivery of a literary work;
(iii) a transmission in a diffusion service;
(iii) a broadcasting of a work;
(v) an exhibition of a work of art;
(vi) a construction of a work of architecture.
(e) For the purposes of sections 6, 7 and 11 (b), a work shall be deemed to be published if copies thereof have been issued to the public.
[Sub-s. (5) added by s. 1 (x) of Act No. 125 of 1992.]
(Date of commencement 30 June, 1978.)
CHAPTER 1

COPYRIGHT IN ORIGINAL WORKS

2. Works eligible for copyright.

(1) Subject to the provisions of this Act, the following works, if they are original, shall be eligible for copyright—

(a) literary works;

(b) musical works;

(c) artistic works;

(d) cinematograph films;

[Para. (d) substituted by s. 2 (a) of Act No. 125 of 1992.]

(e) sound recordings;

(f) broadcasts;

(f) programme-carrying signals;

(h) published editions;

[Para. (h) added by s. 2 of Act No. 52 of 1984.]

(i) computer programs.

[Sub-s. (1) amended by s. 2 (a) of Act No. 56 of 1980. Para. (i) added by s. 2 (b) of Act No. 125 of 1992.]

(2) A work, except a broadcast or programme-carrying signal, shall not be eligible for copyright unless the work has been written down, recorded, represented in digital data or signals or otherwise reduced to a material form.

[Sub-s. (2) substituted by s. 2 (b) of Act No. 56 of 1980, by s. 2 (c) of Act No. 125 of 1992 and by s. 51 of Act No. 38 of 1997.]

(2A) A broadcast or a programme-carrying signal shall not be eligible for copyright until, in the case of a broadcast, it has been broadcast and, in the case of a programme carrying signal, it has been transmitted by a satellite.

[Sub-s. (2A) inserted by s. 2 (d) of Act No. 125 of 1992.]

(3) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

3. Copyright by virtue of nationality, domicile or residence, and duration of copyright.

(1) Copyright shall be conferred by this section on every work, eligible for copyright, of which the author or, in the case of a work of joint authorship, any one of the authors is at the time the work or a substantial part thereof is made, a qualified person, that is—

(a) in the case of an individual, a person who is a South African citizen or is domiciled or resident in the Republic; or

(b) in the case of a juristic person, a body incorporated under the laws of the Republic:

Provided that a work of architecture erected in the Republic or any other artistic work incorporated in a building or any other permanent structure in the Republic, shall be eligible for copyright, whether or not the author was a qualified person.

[Sub-s. (1) substituted by s. 3 (a) of Act No. 125 of 1992.]

(2) The term of copyright conferred by this section shall be, in the case of—

(a) literary or musical works or artistic works, other than photographs, the life of the author and fifty years from the end of the year in which the author dies: Provided that if before the death of the

author none of the following acts had been done in respect of such works or an adaptation thereof, namely—
(i) the publication thereof;
(ii) the performance thereof in public;
(iii) the offer for sale to the public of records thereof;
(iv) the broadcasting thereof, the term of copyright shall continue to subsist for a period of fifty years from the end of the year in which the first of the said acts is done;
[Para. (a) amended by s. 3 (a) of Act No. 52 of 1984.]
(b) cinematograph films, photographs and computer programs, fifty years from the end of the year in which the work—
(i) is made available to the public with the consent of the owner of the copyright; or
(ii) is first published, whichever term is the longer, or failing such an event within fifty years of the making of the work, fifty years from the end of the year in which the work is made;
[Para. (b) substituted by s. 3 (b) of Act No. 125 of 1992 and by s. 52 of Act No. 38 of 1997.]
(c) sound recordings, fifty years from the end of the year in which the recording is first published;
(d) broadcasts, fifty years from the end of the year in which the broadcast first takes place;
(d) programme-carrying signals, fifty years from the end of the year in which the signals are emitted to a satellite;
(f) published editions, fifty years from the end of the year in which the edition is first published.
[Para. (f) added by s. 3 (b) of Act No. 52 of 1984.]
(3) (a) In the case of anonymous or pseudonymous works, the copyright therein shall subsist for fifty years from the end of the year in which the work is made available to the public with the consent of the owner of the copyright or from the end of the year in which it is reasonable to presume that the author died, whichever term is the shorter.
[Para. (a) substituted by s. 3 (c) of Act No. 125 of 1992.]
(b) In the event of the identity of the author becoming known before the expiration of the period referred to in paragraph (a), the term of protection of the copyright shall be calculated in accordance with the provisions of subsection (2).
(4) In the case of a work of joint authorship the reference in the preceding subsections to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person.
4. Copyright by reference to country of origin.
(1) Copyright shall be conferred by this section on every work which is eligible for copyright and which—
(a) being a literary, musical or artistic work or a sound recording, is first published in the Republic;
(b) being a broadcast, is made in the Republic;
(c) being a programme-carrying signal, is emitted to a satellite from a place in the Republic;

(e) being a cinematograph film, is first published or made in the Republic;
(e) being a published edition, is first published in the Republic;
[Para. (e) added by s. 4 (b) of Act No. 52 of 1984.]
(f) being a computer program, is first published or made in the Republic, and in respect of which copyright is not conferred by section 3.
[Para. (f) inserted by s. 4 of Act No. 125 of 1992.]
(2) Copyright conferred on a work by this section shall be subject to the same term of copyright provided for in section 3 for a similar work.
5. Copyright in relation to the state and certain international organizations.
(1) This Act shall bind the state.
(2) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the state or such international organizations as may be prescribed.
(3) Copyright conferred by this section on a literary or musical work or an artistic work, other than a photograph, shall subsist for fifty years from the end of the year in which the work is first published.
(4) Copyright conferred by this section on a cinematograph film, photograph, sound recording, broadcast, programme-carrying signal, published edition or a computer program shall be subject to the same term of copyright provided for in section 3 for a similar work.
[Sub-s. (4) substituted by s. 5 of Act No. 52 of 1984 and by s. 5 of Act No. 125 of 1992.]
(5) Sections 3 and 4 shall not confer copyright on works with reference to which this section applies.
(6) Copyright which vests in the state shall for administrative purposes be deemed to vest in such officer in the public service as may be designated by the State President by proclamation in the Gazette.
6. Nature of copyright in literary or musical works.
Copyright in a literary or musical work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:
(a) Reproducing the work in any manner or form;
(b) publishing the work if it was hitherto unpublished;
[Para. (b) substituted by s. 6 of Act No. 125 of 1992.]
(c) performing the work in public;
(d) broadcasting the work;
(e) causing the work to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the work, and is operated by the original broadcaster;
[Para. (e) substituted by s. 3 (b) of Act No. 56 of 1980.]
(f) making an adaptation of the work;
(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) inclusive.
[S. 6 amended by s. 3 (a) of Act No. 56 of 1980.]
7. Nature of copyright in artistic works.
Copyright in an artistic work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:
(a) Reproducing the work in any manner or form;
(b) publishing the work if it was hitherto unpublished;

[Para. (b) substituted by s. 7 of Act No. 125 of 1992.]
(c) including the work in a cinematograph film or a television broadcast;
(d) causing a television or other programme, which includes the work, to be transmitted in a diffusion service, unless such service transmits a lawful tele- vision broadcast, including the work, and is operated by the original broadcaster;
[Para. (d) substituted by s. 4 (b) of Act No. 56 of 1980.]
(e) making an adaptation of the work;
(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) inclusive.
[S. 7 amended by s. 4 (a) of Act No. 56 of 1980.]
8. Nature of copyright in cinematograph films.
(1) Copyright in a cinematograph film vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:
(a) Reproducing the film in any manner or form, including making a still photograph therefrom;
[Para. (a) substituted by s. 8 (a) of Act No. 125 of 1992.]
(b) causing the film, in so far as it consists of images, to be seen in public, or, in so far as it consists of sounds, to be heard in public;
(c) broadcasting the film;
(d) causing the film to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the film, and is operated by the original broadcaster;
[Para. (d) substituted by s. 5 (b) of Act No. 56 of 1980.]
(e) making an adaptation of the film;
(f) doing, in relation to an adaptation of the film, any of the acts specified in relation to the film in paragraphs (a) to (d) inclusive;
(g) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the film.
[Sub-s. (1) amended by s. 5 (a) of Act No. 56 of 1980. Para. (g) added by s. 6 of Act No. 52 of 1984 and substituted by s. 1 of Act No. 61 of 1989 and by s. 8 (b) of Act No. 125 of 1992.]
(2) . . . . . .
[Sub-s. (2) deleted by s. 8 (c) of Act No. 125 of 1992.]
9. Nature of copyright in sound recordings.
Copyright in a sound recording vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:
(a) Making, directly or indirectly, a record embodying the sound recording;
(b) letting, or offering or exposing for hire by way of trade, directly or indirectly, a reproduction of the sound recording;
(c) broadcasting the sound recording;
(d) causing the sound recording to be transmitted in a diffusion service, unless that service transmits a lawful broadcast, including the sound recording, and is operated by the original broadcaster;
(e) communicating the sound recording to the public.
[S. 9 amended by s. 7 of Act No. 52 of 1984 and by s. 2 of Act No. 61 of 1989 and substituted by s. 6 of Act No. 56 of 1980 and by s. 2 of Act 9 of 2002.]
9A. Royalties.
(1) (a) In the absence of an agreement to the contrary, no person

may broadcast, cause the transmission of or play a sound recording as contemplated in section 9 (c), (d) or (e) without payment of a royalty to the owner of the relevant copyright.
(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, or between their representative collecting societies.
(c) In the absence of an agreement contemplated in paragraph (b), the user, performer or owner may 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 who receives payment of a royalty in terms of this section shall share such royalty with any performer whose performance is featured on the sound recording in question and who would have been entitled to receive a royalty in that regard as contemplated in section 5 of the Performers' Protection Act, 1967 (Act No 11 of 1967).
(b) The performer's share of the royalty shall be determined by an agreement between the performer and the owner of copyright, or between their representative collecting societies.
(c) In the absence of an agreement contemplated in paragraph (b), the performer or owner may 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).
(d) Any payment made by the user of the sound recording in terms of this subsection shall be deemed to have discharged any obligation which that user might have to make any payment in respect of his or her use of a corresponding fixation in terms of section 5 of the Performers' Protection Act, 1967 (Act No. 11 of 1967).
(3) In the event of any right to a royalty being assigned to any successor in title, either by contractual arrangement, operation of law, testamentary disposition or otherwise, any successor in title shall be entitled to enforce such right to a royalty against the person who in terms of this section is obliged to pay or against his or her successor in title.
[S. 9A inserted by s. 3 of Act 9 of 2002.]
10. Nature of copyright in broadcasts.
Copyright in a broadcast vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:
(a) Reproducing, directly or indirectly, the broadcast in any manner or form, including, in the case of a television broadcast, making a still photograph therefrom;
[Para. (a) substituted by s. 9 of Act No. 125 of 1992.]
(b) rebroadcasting the broadcast;
(c) causing the broadcast to be transmitted in a diffusion service, unless such service is operated by the original broadcaster.
[S. 10 amended by s. 7 of Act No. 56 of 1980.]
11. Nature of copyright in programme-carrying signals.

Copyright in programme carrying signals vest the exclusive right to undertake, or to authorize, the direct or indirect distribution of such signals by any distributor to the general public or any section thereof in the Republic, or from the Republic.

11A. Nature of copyright in published editions.

Copyright in a published edition vests the exclusive right to make or to authorize the making of a reproduction of the edition in any manner.

[S. 11A inserted by s. 8 of Act No. 52 of 1984.]

11B. Nature of copyright in computer programs.

Copyright in a computer program vests the exclusive right to do or authorize the doing of any of the following acts in the Republic:

(a) Reproducing the computer program in any manner or form;

(b) publishing the computer program if it was hitherto unpublished;

(c) performing the computer program in public;

(d) broadcasting the computer program;

(e) causing the computer program to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the computer program, and is operated by the original broadcaster;

(f) making an adaptation of the computer program;

(g) doing, in relation to an adaptation of the computer program, any of the acts specified in relation to the computer program in paragraphs (a) to (e) inclusive;

(h) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the computer program.

[S. 11B inserted by s. 10 of Act No. 125 of 1992 and substituted by s. 53 of Act No. 38 of 1997.]

12. General exceptions from protection of literary and musical works.

(1) Copyright shall not be infringed by any fair dealing with a literary or musical work—

(a) for the purposes of research or private study by, or the personal or private use of, the person using the work;

(b) for the purposes of criticism or review of that work or of another work; or

(c) for the purpose of reporting current events—

(i) in a newspaper, magazine or similar periodical; or

(ii) by means of broadcasting or in a cinematograph film:

Provided that, in the case of paragraphs (b) and (c) (i), the source shall be mentioned, as well as the name of the author if it appears on the work.

[Sub-s. (1) amended by s. 11 (a) and (b) of Act No. 125 of 1992.]

(2) The copyright in a literary or musical work shall not be infringed by using the work for the purposes of judicial proceedings or by reproducing it for the purposes of a report of judicial proceedings.

(3) The copyright in a literary or musical work which is lawfully available to the public shall not be infringed by any quotation therefrom, including any quotation from articles in newspapers or periodicals that are in the form of summaries of any such work: Provided that the quotation shall be compatible with fair practice, that the extent thereof shall not exceed the extent justified by the purpose and that the source shall be mentioned, as well as the name of the author if it appears on the work.

(4) The copyright in a literary or musical work shall not be infringed by

using such work, to the extent justified by the purpose, by way of illustration in any publication, broadcast or sound or visual record for teaching: Provided that such use shall be compatible with fair practice and that the source shall be mentioned, as well as the name of the author if it appears on the work.

(5) (a) The copyright in a literary or musical work shall not be infringed by the reproduction of such work by a broadcaster by means of its own facilities where such reproduction or any copy thereof is intended exclusively for lawful broadcasts of the broadcaster and is destroyed before the expiration of a period of six months immediately following the making of the reproduction, or such longer period as may be agreed to by the owner of the relevant part of the copyright in the work.

(b) Any reproduction of a work made under paragraph (a) may, if it is of an exceptional documentary nature, be preserved in the archives of the broadcaster, but shall, subject to the provisions of this Act, not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work.

[Sub-s. (5) substituted by s. 54 of Act No. 38 of 1997.]

(6) (a) The copyright in a lecture, address or other work of a similar nature which is delivered in public shall not be infringed by reproducing it in the press or by broadcasting it, if such reproduction or broadcast is for an informatory purpose.

(b) The author of a lecture, address or other work referred to in paragraph (a) shall have the exclusive right of making a collection thereof.

(7) The copyright in an article published in a newspaper or periodical, or in a broadcast, on any current economic, political or religious topic shall not be infringed by reproducing it in the press or broadcasting it, if such reproduction or broadcast has not been expressly reserved and the source is clearly mentioned.

(8) (a) No copyright shall subsist in official texts of a legislative, administrative or legal nature, or in official translations of such texts, or in speeches of a political nature or in speeches delivered in the course of legal proceedings, or in news of the day that are mere items of press information.

(b) The author of the speeches referred to in paragraph (a) shall have the exclusive right of making a collection thereof.

(9) The provisions of subsections (1) to (7) inclusive shall apply also with reference to the making or use of an adaptation of a work.

[Sub-s. (9) substituted by s. 11 (c) of Act No. 125 of 1992.]

(10) The provisions of subsections (6) and (7) shall apply also with reference to a work or an adaptation thereof which is transmitted in a diffusion service.

[Sub-s. (10) substituted by s. 11 (d) of Act No. 125 of 1992.]

(11) The provisions of subsections (1) to (4) inclusive and (6), (7) and (10) shall be construed as embracing the right to use the work in question either in its original language or in a different language, and the right of translation of the author shall, in the latter event, be deemed not to have been infringed.

(12) The copyright in a literary or musical work shall not be infringed by the

use thereof in a bona fide demonstration of radio or television receivers or any type of recording equipment or playback equipment to a client by a dealer in such equipment.
[Sub-s. (12) substituted by s. 11 (e) of Act No. 125 of 1992.]
(13) An authorization to use a literary work as a basis for the making of a cinematograph film or as a contribution of a literary work to such making, shall, in the absence of an agreement to the contrary, include the right to broadcast such film.
[Sub-s. (13) added by s. 11 (f) of Act No. 125 of 1992.]
13. General exceptions in respect of reproduction of works.
In addition to reproductions permitted in terms of this Act reproduction of a work shall also be permitted as prescribed by regulation, but in such a manner that the reproduction is not in conflict with a normal exploitation of the work and is not unreasonably prejudicial to the legitimate interests of the owner of the copyright.
[S. 13 substituted by s. 8 of Act No. 56 of 1980.]
14. Special exception in respect of records of musical works.
(1) The copyright in a musical work shall not be infringed by a person (in this section referred to as the “manufacturer”) who makes a record of the work or of an adaptation thereof in the Republic, whether from an imported disc, tape, matrix or otherwise, if—
(a) records embodying the work or a similar adaptation of the work were previously made in or imported into the Republic for the purposes of retail sale and were so made or imported by, or with the licence of, the owner of the copyright in the work;
(b) before making the record the manufacturer gave the prescribed notice to the owner of the copyright of his intention to make it;
(c) the manufacturer intends to sell the record by retail or to supply it for the purpose of resale by retail by another person or to use it for making other records to be so sold or so supplied; and
(d) in the case of a record which is sold by retail or supplied for the purpose of resale by retail, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, the prescribed royalties.
(2) Where a record comprises, with or without other material, a performance of a musical work or of an adaptation of a musical work in which words are sung or are spoken that are incidental to, or in association with, the music and no copyright subsists in that work or, if copyright does subsist therein, the conditions specified in subsection (1) are fulfilled in relation to such copyright and—
(a) the words consist or form part of a literary work in which copyright subsists; and
(b) the records referred to in subsection (1) (a) were made or imported by or with the licence of the owner of the copyright in that literary work; and
(c) the conditions specified in subsection (1) (b) and (d) are fulfilled in relation to the owner of that copyright, the making of the record shall not constitute an infringement of the copyright in the literary work.

(3) For the purposes of this section an adaptation of a work shall be deemed to be similar to an adaptation thereof embodied in a previous record if the two adaptations do not substantially differ in their treatment of the work, either in respect of style or, apart from any difference in number, in respect of the performers required to perform them.
(4) A manufacturer may for the purposes of paragraph (a) of subsection (1) make the prescribed enquiries in order to ascertain whether the previous records referred to in that paragraph were previously made in or imported into the Republic, and if the owner of the copyright fails to reply to such enquiries within the prescribed period, the said previous records shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.
(5) The preceding provisions of this section shall apply also with reference to records of a part of a work or an adaptation thereof: Provided that the provisions of subsection (1) shall not apply with reference to—
(a) a record of the whole of a work or an adaptation thereof unless the previous records referred to in paragraph (a) of that subsection were records of the whole of the work or of a similar adaptation; or
(b) a record of a part of a work or an adaptation thereof unless the records previously made in or imported into the Republic as contemplated in paragraph (a) of that subsection were of, or included, that part of the work or of a similar adaptation.
[S. 14 substituted by s. 12 of Act No. 125 of 1992.]
15. General exceptions from protection of artistic works.
(1) The copyright in an artistic work shall not be infringed by its inclusion in a cinematograph film or a television broadcast or transmission in a diffusion service, if such inclusion is merely by way of background, or incidental, to the principal matters represented in the film, broadcast or transmission.
(2) The copyright in a work of architecture or in the relevant drawings shall not be infringed by the reconstruction of that work on the same site in the same style as the original.
(3) The copyright in an artistic work shall not be infringed by its reproduction or inclusion in a cinematograph film or a television broadcast or transmission in a diffusion service, if such work is permanently situated in a street, square or a similar public place.
(3A) (a) The copyright in an artistic work of which three-dimensional reproductions were made available, whether inside or outside the Republic, to the public by or with the consent of the copyright owner (hereinafter referred to as authorized reproductions), shall not be infringed if any person without the consent of the owner makes or makes available to the public three-dimensional reproductions or adaptations of the authorized reproductions, provided—
(i) . . . . . .
[Sub-para. (i) deleted by s. 2 (1) (a) of Act No. 13 of 1988.]
(ii) the authorized reproductions primarily have a utilitarian

purpose and are made by an industrial process.
(b) . . . . . .
[Sub-s. (3A) inserted by s. 2 of Act No. 66 of 1983. Para. (b) deleted by s. 2 (1) (b) of Act No. 13 of 1988.]
(4) The provisions of section 12 (1), (2), (4), (5), (9), (10), (12) and (13) shall mutatis mutandis, in so far as they can be applied, apply with reference to artistic works.
[Sub-s. (4) substituted by s. 13 of Act No. 125 of 1992.]
16. General exceptions regarding protection of cinematograph films.
(1) The provisions of section 12 (1) (b) and (c), (2), (3), (4), (12) and (13) shall mutatis mutandis apply with reference to cinematograph films.
(2) Where sounds embodied in a sound-track associated with a cinematograph film are also embodied in a record other than such a soundtrack or in a record derived directly or indirectly from such a sound-track, the copyright in the film shall not be infringed by the use of that record.
[S. 16 substituted by s. 14 of Act No. 125 of 1992.]
17. General exceptions regarding protection of sound recordings.
The provisions of section 12 (1) (b) and (c), (2), (3), (4), (5), (12) and (13) shall mutatis mutandis apply with reference to sound recordings.
[S. 17 substituted by s. 15 of Act No. 125 of 1992.]
18. General exceptions regarding protection of broadcasts.
The provisions of section 12 (1) to (5) inclusive, (12) and (13) shall mutatis mutandis apply with reference to broadcasts.
[S. 18 substituted by s. 16 of Act No. 125 of 1992.]
19. General exceptions from protection of programme-carrying signals.
(1) The copyright in programme-carrying signals shall not be infringed by the distribution of short excerpts of the programme so carried—
(a) that consist of reports of current events; or
(b) as are compatible with fair practice,
and to the extent justified by the informatory purpose of such excerpts.
(2) The provisions of this section shall not apply with reference to a programme carried by programme-carrying signals representing a sporting event.
19A. General exceptions regarding protection of published editions.
The provisions of section 12 (1), (2), (4), (5), (8), (12) and (13) shall mutatis mutandis apply with reference to published editions.
[S. 19A inserted by s. 9 of Act No. 52 of 1984 and substituted by s. 17 of Act No. 125 of 1992.]
19B. General exceptions regarding protection of computer programs.
(1) Subject to the provisions of section 23 (2) (d), the provisions of section 12 (1) (b) and (c), (2), (3), (4), (5), (12) and (13) shall mutatis mutandis apply, in so far as they can be applied, with reference to computer programs.
(2) The copyright in a computer program shall not be infringed by a person who is in lawful possession of that computer program, or an authorized copy thereof, if—
(a) he makes copies thereof to the extent reasonably necessary for back-up purposes;
(b) a copy so made is intended exclusively for personal or private

purposes; and
(c) such copy is destroyed when the possession of the computer program in question, or authorized copy thereof, ceases to be lawful.
[S. 19B inserted by s. 18 of Act No. 125 of 1992.]
20. Moral rights.
(1) Notwithstanding the transfer of the copyright in a literary, musical or artistic work, in a cinematograph film or in a computer program, 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 work in a cinematograph film or a television broadcast 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 necessary on technical grounds or for the purpose of commercial exploitation of the work.
(2) Any infringement of the provisions of this section shall be treated as an infringement of copyright under Chapter 2, and for the purposes of the provisions of the said Chapter the author shall be deemed to be the owner of the copyright in question.
[S. 20 substituted by s. 19 of Act No. 125 of 1992.]
21. Ownership of copyright.
(1) (a) Subject to the provisions of this section, the ownership of any copyright conferred by section 3 or 4 on any work shall vest in the author or, in the case of a work of joint authorship, in the co-authors of the work.
(b) Where a literary or artistic work is made by an author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall be the owner of the copyright in the work in so far as the copyright relates to publication of the work in any newspaper, magazine or similar periodical or to reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the owner of any copyright subsisting in the work by virtue of section 3 or 4.
(c) Where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of a cinematograph film or the making of a sound recording and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, such person shall, subject to the provisions of paragraph (b), be the owner of any copyright subsisting therein by virtue of section 3 or 4.
(d) Where in a case not falling within either paragraph (b) or (c) a work is made in the course of the author's employment by another person under a contract of service or apprenticeship, that other person shall be the owner of any copyright subsisting in the work by virtue of section 3 or 4.

(e) Paragraphs (b), (c) and (d) shall in any particular case have effect subject to any agreement excluding the operation thereof and subject to the provisions of section 20.
(2) Ownership of any copyright conferred by section 5 shall initially vest in the state or the international organization concerned, and not in the author.
[S. 21 substituted by s. 9 of Act No. 56 of 1980.]
22. Assignment and licences in respect of copyright.
(1) Subject to the provisions of this section, copyright shall be transmissible as movable property by assignment, testamentary disposition or operation of law.
(2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the term of the copyright, or to a specified country or other geographical area.
(3) No assignment of copyright and no exclusive licence to do an act which is subject to copyright shall have effect unless it is in writing signed by or on behalf of the assignor, the licenser or, in the case of an exclusive sublicence, the exclusive sublicenser, as the case may be.
(4) A non-exclusive licence to do an act which is subject to copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time: Provided that such a licence granted by contract shall not be revoked, either by the person who granted the licence or his successor in title, except as the contract may provide, or by a
(5) An assignment, licence or testamentary disposition may be granted or made in respect of the copyright in a future work, or the copyright in an existing work in which copyright does not subsist but will come into being in the future, and the future copyright in any such work shall be transmissible as movable property.
(6) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, in the absence of a stipulation to the contrary, be taken to include the disposition of any copyright or future copyright in the work which is vested in the deceased at the time of his death.
(7) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright, shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser, and any reference in this Act to the doing in relation to any copyright of anything with or without the licence of the owner of the copyright shall be construed accordingly.
(8) Where the doing of anything is authorized by the grantee of a licence or a person deriving title from the grantee, and it is within the terms, including any implied terms, of the licence for him to authorize it, it shall for the purpose of this Act be deemed to be done with the licence of the grantor and of every person, if any, upon whom the licence is binding.
CHAPTER 2
INFRINGEMENTS OF COPYRIGHT AND REMEDIES

23. Infringement.
(1) Copyright shall be infringed by any person, not being the owner of the copyright, who, without the licence of such owner, does or causes any other person to do, in the Republic, any act which the owner has the exclusive rights to do or to authorize.
[Sub-s. (1) substituted by s. 20 (a) of Act No. 125 of 1992.]
(2) Without derogating from the generality of subsection (1), copyright shall be infringed by any person who, without the licence of the owner of the copyright and at a time when copyright subsists in a work—
(a) imports an article into the Republic for a purpose other than for his private and domestic use;
(b) sells, lets, or by way of trade offers or exposes for sale or hire in the Republic any article;
(c) distributes in the Republic any article for the purposes of trade, or for any other purpose, to such an extent that the owner of the copyright in question is prejudicially affected; or
(d) acquires an article relating to a computer program in the Republic,
[Para. (d) inserted by s. 20 (b) of Act No. 125 of 1992.]
if to his knowledge the making of that article constituted an infringement of that copyright or would have constituted such an infringement if the article had been made in the Republic.
(3) The copyright in a literary or musical work shall be infringed by any person who permits a place of public entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work: Provided that this subsection shall not apply in a case where the person permitting the place of public entertainment to be so used was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of the copyright.
(4) . . . . . .
[Sub-s. (4) deleted by s. 20 (c) of Act No. 125 of 1992.]
24. Action by owner of copyright for infringement.
(1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright, and in any action for such an infringement all such relief by way of damages, interdict, delivery of infringing copies or plates used or intended to be used for infringing copies or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.
[Sub-s. (1) substituted by s. 21 (a) of Act No. 125 of 1992.]
(1A) In lieu of damages the plaintiff may, at his or her option, be awarded an amount calculated on the basis of a reasonable royalty which would have been payable by a licensee in respect of the work or type of work concerned.
[Sub-s. (1A) inserted by s. 21 (b) of Act No. 125 of 1992 and substituted by s. 55 of Act No. 38 of 1997.]
(1B) For the purposes of determining the amount of damages or a reasonable royalty to be awarded under this section or section 25 (2), the court may direct an enquiry to be held and may prescribe such procedures for conducting such enquiry as the court considers

necessary.
[Sub-s. (1B) inserted by s. 21 (b) of Act No. 125 of 1992 and substituted by s. 55 of Act No. 38 of 1997.]
(1C) Before the owner of copyright institutes proceedings under this section, he or she shall give notice in writing to the exclusive licensee or sub-licensee of the copyright concerned of the intention to do so, and the exclusive licensee or sub-licensee may intervene in such proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.
[Sub-s. (1C) inserted by s. 21 (b) of Act No. 125 of 1992 and substituted by s. 55 of Act No. 38 of 1997.]
(2) Where in an action for infringement of copyright it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement.
[Sub-s. (2) substituted by s. 21 (c) of Act No. 125 of 1992.]
(3) Where in an action under this section an infringement of copyright is proved or admitted, and the court having regard, in addition to all other material considerations, to—
(a) the flagrancy of the infringement; and
(b) any benefit shown to have accrued to the defendant by reason of the infringement, is satisfied that effective relief would not otherwise be available to the plaintiff, the court shall in assessing damages for the infringement have power to award such additional damages as the court may deem fit.
(4) In an action for infringement of copyright in respect of the construction of a building, no interdict or other order shall be made—
(a) after the construction of the building has been begun so as to prevent it from being completed; or
(b) so as to require the building, in so far as it has been constructed, to be demolished.
25. Rights of action and remedies of exclusive licensee and exclusive sublicensee.
(1) An exclusive licensee and an exclusive sub-licensee shall have the same rights of action and be entitled to the same remedies as if the licence were an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under which the licence and sub-licence were granted.
(2) Before an exclusive licensee or sub-licensee institutes proceedings under subsection (1), he or she shall give notice in writing to the owner of the copyright concerned of the intention to do so, and the owner may intervene in such proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.
[S. 25 substituted by s. 1 of Act No. 39 of 1986. Sub-s. (2) added by s. 22 of Act No. 125 of 1992 and substituted by s. 56 of Act No. 38 of 1997.]
26. Onus of proof in proceedings.
(1) Where in the case of a literary, musical or artistic work or a computer program a name purporting to be that of the author appeared on

copies of the said work or program as published or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appeared shall, if it was his true name or a name by which he was commonly known, in any proceedings brought by virtue of this Chapter be presumed, unless the contrary is proved, to be the author of the work or program.

(2) In the case of a work or program alleged to be a work or program of joint authorship, subsection (1) shall apply in relation to each person alleged to be one of the authors of the work or program as if references in that subsection to the author were references to one of the authors.

(3) Where in any proceedings brought by virtue of this Chapter with respect to a literary, musical or artistic work or a computer program which is anonymous or pseudonymous it is established—

(a) that the work or program was first published in the Republic and was so published within the period of fifty years ending with the beginning of the calendar year in which the proceedings were brought; and

(b) that a name purporting to be that of the publisher appeared on copies of the work or program as first published, then, unless the contrary is shown, copyright shall be presumed to subsist in the work or program and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication: Provided that this subsection shall not apply if the actual name of the author of a pseudonymous work is commonly known.

(4) Where in any proceedings brought by virtue of this Chapter with respect to a literary, musical or artistic work or a computer program it is proved or admitted that the author of the work or program is dead, the work or program shall be presumed to be an original work or program unless the contrary is proved.

(5) Subsection (4) shall also apply where a work or program has been published and—

(a) the publication was anonymous or under a name alleged by the plaintiff or the State to be a pseudonym; and

(b) it is not shown that the work or program has ever been published under the true name of the author or under a name by which he was commonly known or that it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry.

(6) Where in any proceedings brought by virtue of this Chapter with respect to the alleged infringement of copyright in a cinematograph film it is proved that the name purporting to be the name of the author of that film appears thereon in the prescribed manner, the person whose name so appears shall be presumed to be the author of that film, unless the contrary is proved.

(7) Where in any proceedings brought by virtue of this Chapter with respect to the alleged infringement of copyright in a sound recording it is proved that records embodying that recording or part thereof have been issued to the public and that at the time when those records were so issued the following claims appeared on a label or any other

printed matter affixed to such records or in or on anything in which they were contained, that is to say—
(a) that a person named on the label or printed matter is the author of the sound recording; or
(b) that the recording was first published in a year and at a place specified on the label or printed matter, that label or printed matter shall be sufficient evidence of the facts so stated, except in so far as the contrary is proved.
(7A) A claim contemplated in paragraph (a) of subsection (7) may be made by means of the symbol “C” in conjunction with the name of the person concerned, and a claim contemplated in paragraph (b) of that subsection may be made by means of the symbol “P” in conjunction with the year and place in question.
(8) . . . . . .
(9) In any proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a cinematograph film registered in terms of the Registration of Copyright in Cinematograph Films Act, 1977 (Act No. 62 of 1977), it shall be presumed—
(a) that every party to those proceedings had knowledge of the particulars entered in the register of copyright mentioned in section 15 of the said Act from the date of the lodging of the application in question to record those particulars;
(b) that the person who is alleged to have done an act which infringes the relevant copyright did that act without the required authority, unless the contrary is proved.
(10) In any proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a cinematograph film, a sound recording or a computer program, it shall be presumed, until the contrary is proved, that any person trading in the selling, letting or distribution of copies of any of the said works, and who was found in possession of a copy of any of such works, sold or let for hire or by way of trade offered or exposed for sale or hire such copy.
(11) Where in any proceedings by virtue of this Chapter with regard to the alleged infringement of the copyright in a work it is proved that the person alleged to have done an act which allegedly infringes the relevant copyright did such act without the authority of the exclusive licensee, it shall be presumed, unless the contrary is proved, that the relevant act was done also without the authority of the owner of the copyright concerned.
(12) (a) In any proceedings by virtue of this Chapter relating to the alleged infringement of the copyright in a work, evidence to prove—
(i) the subsistence of the copyright in that work; or
(ii) the title of any person in respect of such copyright, whether by way of ownership or licence, may be adduced by way of affidavit, and the mere production of such affidavit in such proceedings shall be prima facie proof of the relevant facts.
(b) The court before which an affidavit referred to in paragraph (a) is produced, may in its discretion order the person who made the affidavit to be subpoenaed to give oral evidence in the

proceedings in question, or may cause written interrogatories to be submitted to such person for reply, and any reply purporting to be a reply from such person, shall likewise be admissible in evidence in such proceedings.
[S. 26 amended by s. 3 of Act No. 66 of 1983, by s. 10 of Act No. 52 of 1984 and by s. 3 (1) of Act No. 13 of 1988 and substituted by s. 23 of Act No. 125 of 1992.]

27. Penalties and proceedings in respect of dealings which infringe copyright.

(1) Any person who at a time when copyright subsists in a work, without the authority of the owner of the copyright—
(a) makes for sale or hire;
(b) sells or lets for hire or by way of trade offers or exposes for sale or hire;
(c) by way of trade exhibits in public;
(d) imports into the Republic otherwise than for his private or domestic use;
(e) distributes for purposes of trade; or
(f) distributes for any other purposes to such an extent that the owner of the copyright is prejudicially affected,
articles which he knows to be infringing copies of the work, shall be guilty of an offence.
[Sub-s. (1) substituted by s. 11 (a) of Act No. 52 of 1984 and by s 3. of Act No. 61 of 1989.]

(2) Any person who at a time when copyright subsists in a work makes or has in his possession a plate knowing that it is to be used for making infringing copies of the work, shall be guilty of an offence.

(3) Any person who causes a literary or musical work to be performed in public knowing that copyright subsists in the work and that performance constitutes an infringement of the copyright, shall be guilty of an offence.

(4) Any person who causes a broadcast to be rebroadcast or transmitted in a diffusion service knowing that copyright subsists in the broadcast and that such rebroadcast or transmission constitutes an infringement of the copyright, shall be guilty of an offence.

(5) Any person who causes programme-carrying signals to be distributed by a distributor for whom they were not intended knowing that copyright subsists in the signals and that such distribution constitutes an infringement of the copyright, shall be guilty of an offence.

(6) A person convicted of an offence under this section shall be liable—
(a) in the case of a first conviction, to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment, for each article to which the offence relates;
(b) in any other case, to a fine not exceeding ten thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, for each article to which the offence relates.
[Sub-s. (6) substituted by s. 11 (b) of Act No. 52 of 1984 and by s. 24 (a) of Act No. 125 of 1992.]

(7) . . . . . .

[Sub-s. (7) deleted by s. 24 (b) of Act No. 125 of 1992.]
(8) . . . . . .
[Sub-s. (8) added by s. 11 (c) of Act No. 52 of 1984 and deleted by s. 24 (b) of Act No. 125 of 1992.]
28. Provision for restricting importation of copies.
(1) The owner of the copyright in any published work may give notice in writing to the Commissioner for Customs and Excise (in this section referred to as "the Commissioner")—
(a) that he is the owner of the copyright in the work; and
(b) that he requests the Commissioner to treat as prohibited goods, during a period specified in the notice, copies of the work to which this section applies:
Provided that the period specified in a notice under this subsection shall not extend beyond the end of the period for which the copyright is to subsist:
Provided further that the Commissioner shall not be bound to act in terms of any such notice unless the owner of the copyright furnishes him with security in such form and for such amount as he may require to secure the fulfilment of any liability and the payment of any expense which he may incur by reason of the detention by him of any copy of the work to which the notice relates or as a result of anything done by him in relation to a copy so detained.
[Sub-s. (1) amended by s. 25 (a) of Act No. 125 of 1992.]
(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.
(3) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation into the Republic at a time before the end of the period specified in the notice of any copy of the work to which this section applies shall be prohibited.
(4) Notwithstanding anything contained in the Customs and Excise Act, 1964 (Act No. 91 of 1964), a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason of the fact that any goods are treated as prohibited goods by virtue of this section.
(5) This section shall mutatis mutandis apply with reference to an exclusive licensee who has the right to import into the Republic any work published elsewhere.
[S. 28 substituted by s. 12 of Act No. 52 of 1984 and by s. 25 (b) of Act No. 125 of 1992.]
CHAPTER 3
COPYRIGHT TRIBUNAL
29. Establishment of Copyright Tribunal.
(1) The judge or acting judge who is from time to time designated as Commissioner of Patents in terms of section 8 of the Patents Act, 1978, shall also be the Copyright Tribunal (in this Chapter referred to as the tribunal) for the purposes of this Act.
(2) The tribunal may order that the costs or expenses of any proceeding before it incurred by any party shall be paid by any other party, and may tax or settle the amount of any costs or expenses to be paid under any such order or direct in what manner they are to be taxed.
(3) (a) Regulations may be prescribed as to the procedure in connection with the making of references and applications to

the tribunal and for regulating proceedings before the tribunal and as to the fees chargeable in respect of those proceedings.
(b) Any such regulations may in relation to proceedings before the tribunal apply any of the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), or alternatively, any of the provisions applicable in the court of the Commissioner of Patents in terms of the Patents Act, 1978.
(c) Any regulations may include provision for—
(i) requiring notice of any intended application to the court under section 36 to be given to the tribunal and to the other parties to the proceedings;
(iii) suspending or authorizing or requiring the tribunal to suspend the operation of orders of the tribunal in cases where after giving its decision an application under section 36 to any provincial division of the Supreme Court is noted;
(iii) modifying in relation to orders of the tribunal, of which the operation is suspended, the operation of any provisions of this Chapter as to the effect of orders made thereunder;
(iv) the publication of notices or the taking of any other steps for ensuring that persons affected by the suspension of an order of the tribunal will be informed of its suspension;
(v) regulating or prescribing any other matters incidental to or consequential upon any request, application, order or decision under section 36.
[Sub-para. (v) substituted by s. 26 (a) of Act No. 125 of 1992.]
(4) Without prejudice to any method available by law for the proof of orders of the tribunal, a document purporting to be a copy of any such order and to be certified by the Registrar to be a true copy thereof shall in any legal proceedings be sufficient evidence of the order unless the contrary is proved.
(5) The Registrar shall act as the registrar of the tribunal.
(6) Any reference in this Chapter to the giving of an opportunity to any person of presenting his case shall be construed as a reference to the giving to that person of the opportunity of submitting representations in writing and of being heard.
[Sub-s. (6) added by s. 26 (b) of Act No. 125 of 1992.]
30. General provisions as to jurisdiction of tribunal.
Subject to the provisions of this Chapter, the function of the tribunal shall be to determine disputes arising between licensing bodies, or other persons from whom licences are required and persons requiring licences, or organizations claiming to be representatives of such persons, either—
(a) on the reference of a licence scheme to the tribunal; or
(b) on the application of a person requiring a licence either in accordance with a licence scheme or in a case not covered by a licence scheme.
[S. 30 substituted by s. 27 of Act No. 125 of 1992.]
31. Reference of licence schemes to tribunal.
(1) Where at any time while a licence scheme is in operation a dispute

arises with respect to the scheme between the licensing body operating the scheme and—
(a) an organization claiming to be representative of persons requiring licences in cases of a class to which the scheme applies; or
(b) any person claiming that he requires a licence in a case of a class to which the scheme applies, the organization or person in question may refer the scheme to the tribunal in so far as it relates to cases of that class.
(2) The parties to a reference under this section shall be—
(a) the organization or person at whose instance the reference is made;
(b) the licensing body operating the scheme to which the reference relates; and
(c) such other organizations or persons (if any) as apply to the tribunal to be made parties to the reference and are in accordance with subsection (3) made parties thereto.
(3) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to a reference, and the tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the tribunal may, if it thinks fit make that organization or person a party to the reference.
(4) The tribunal shall not entertain a reference under this section by an organization unless the tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent.
(5) Subject to the provisions of subsection (4), the tribunal shall on any reference under this section consider the matter in dispute and after giving the parties to the reference an opportunity of presenting their respective cases, make such order, either confirming or varying the scheme in so far as it relates to cases of the class to which the reference relates, as the tribunal may determine to be reasonable in the circumstances.
(6) An order of the tribunal under this section may, notwithstanding anything contained in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the tribunal may determine.
(7) Where the tribunal has made an order in respect of a licence scheme which has been referred to it, such scheme shall, notwithstanding anything contained therein, in so far as it relates to the class of cases in respect of which the order was made, thereafter remain in operation subject to the terms of the order: Provided that this subsection shall not apply in relation to a reference as respects any period after the reference has been withdrawn or has been discharged by virtue of subsection (4).
32. Further reference of scheme to tribunal.
(1) Where the tribunal has made an order under section 31 with respect to a licence scheme—
(a) the licensing body operating the scheme;
(b) any organization claiming to be representative of persons

requiring licences in cases of the class to which the order applies; or
(c) any person claiming that he requires a licence in a case of that class, may, subject to the provisions of subsection (2), at any time while the order is in force, again refer the scheme to the tribunal in so far as it relates to cases of the class in respect of which the order applies.
(2) A licence scheme shall not, except with the special leave of the tribunal, again be referred to the tribunal under subsection (1)—
(a) where the relevant order was made so as to be in force indefinitely or for a period exceeding fifteen months, before the expiration of a period of twelve months from the date on which the order was made; or
(b) where such order was made so as to be in force for a period not exceeding fifteen months, at any time more than three months before the date of expiry of the order.
(3) The provisions of section 31 shall mutatis mutandis apply in respect of any reference under this section or any order made thereon, and the tribunal shall have power to make such order on any such reference as it deems just.
33. Applications to tribunal.
(1) For the purposes of this Chapter a case shall be taken to be covered by a licence scheme if, in accordance with a licence scheme for the time being in operation, licences would be granted in cases of the class to which that case belongs: Provided that where in accordance with the provisions of a licence scheme—
(a) the licences which would be so granted would be subject to terms and conditions whereby particular matters would be excepted from the licences; and
(b) the case in question relates to one or more matters falling within such an exception,that case shall be taken not to be covered by the scheme.
(2) Any person who claims that in a case covered by a licence scheme the licensing body operating the scheme has refused or failed to grant him a licence in accordance with the provisions of the scheme or to procure the grant to him of such a licence, may apply to the tribunal for an order under this section.
(3) An application for such an order may also be made by any person who claims that he requires a licence in a case not covered by a licence scheme, and either—
(a) that a licensing body or person has refused or failed to grant the licence or to procure the grant thereof, and that in the circumstances it is unreasonable that the licence should not be granted; or
(b) that any charges, terms or conditions subject to which a licensing body proposes that the licence should be granted are unreasonable.
(4) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to an application under subsection (2) or (3), and the tribunal is satisfied that

the organization or person has a substantial interest in the matter in dispute, the tribunal may if it thinks fit make that organization or person a party to the application.
(5) On any application under subsection (2) or (3) the tribunal shall give the applicant and the licensing body in question and every other party to the application an opportunity of presenting his case, and if the tribunal is satisfied that the claim of the applicant is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms and conditions and subject to the payment of such charges (if any) as the tribunal may—
(a) in the case of an application under subsection (2), determine to be applicable in accordance with the licence scheme; or
(b) in the case of an application under subsection (3), determine to be reasonable in the circumstances.
(6) Any reference in this section to failure to grant or procure the grant of a licence shall be construed as including a reference to a failure to grant it or to procure the grant thereof within a reasonable time after being requested to do so.
34. Diffusion service.
In a dispute concerning the transmission of broadcasts in a diffusion service in the Republic, the tribunal shall disallow any claim under this Act to the extent to which the licences of the broadcaster concerned provide for or include such transmission in a diffusion service.
[S. 34 substituted by s. 57 of Act No. 38 of 1997.]
35. Effect of orders of tribunal, and supplementary provisions relating thereto.
(1) Any person who complies with the conditions of an order made by the tribunal under this Chapter or who has given a satisfactory undertaking to the owner or prospective owner of the copyright to comply with such conditions, shall be deemed to be the holder of a licence under this Act.
(2) In the exercise of its jurisdiction in respect of licences relating to television broadcasts, the tribunal shall have regard inter alia to any conditions imposed by the promoters of any entertainment or other event which is to be comprised in the broadcasts, and in particular the tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.
36. Appeals.
(1) Any party to proceedings before the tribunal may appeal against any order or decision of the tribunal pursuant to such proceedings.
(2) Every appeal shall be noted and prosecuted in the manner prescribed by law for appeals against a civil order or decision of a single judge, and sections 20 and 21 of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply mutatis mutandis.
(3) The court may in respect of any such appeal—
(a) confirm, vary or set aside the order or decision appealed against, as the court may deem fair;
(b) if the record does not furnish sufficient evidence or information for the determination of the appeal, remit the matter to the

tribunal with instructions in regard to the taking of further evidence or the setting out of further information;
(c) take any other course which in the opinion of the court is fair and may lead to the speedy and as far as may be possible inexpensive settlement of the case; and
(d) make such order as to costs as the court may deem fair.
[S. 36 substituted by s. 28 of Act No. 125 of 1992.]

CHAPTER 4

EXTENSION OR RESTRICTION OF OPERATION OF ACT

37. Application of Act to countries to which it does not extend.
(1) The Minister may by notice in the Gazette provide that any provision of this Act specified in the notice shall in the case of any country so specified apply—
(a) in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recordings and published editions first published in that country as it applies in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recordings and published editions first published in the Republic;
[Para. (a) substituted by s. 13 of Act No. 52 of 1984 and by s. 29 (a) of Act No. 125 of 1992.]
(b) in relation to persons who at a material time are citizens or respondents of that country as it applies in relation to persons who at such a time are South African citizens;
(c) in relation to persons who at a material time are domiciled or resident in that country as it applies in relation to persons who at such a time are domiciled or resident in the Republic;
(d) in relation to bodies incorporated under the laws of that country as it applies in relation to bodies incorporated under the laws of the Republic;
(e) in relation to broadcasts made and programme-carrying signals emitted to a satellite from places in that country as it applies in relation to broadcasts made and programmecarrying signals emitted to a satellite from a place in the Republic.
[Para. (e) substituted by s. 29 (b) of Act No. 125 of 1992.]
(2) A notice under this section may provide—
(a) that any provisions referred to therein shall apply subject to such exceptions or modifications as may be specified in the notice;
(b) that such provisions shall so apply either generally or in relation to such classes of works or classes of cases as may be so specified.
(3) No notice shall be issued under this section in respect of any country which is not a party to a convention relating to copyright to which the Republic is also a party, unless the Minister is satisfied that, in respect of the class of works to which the notice relates, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.
38. . . . . .
[S. 38 repealed by s. 30 of Act No. 125 of 1992.]

CHAPTER 5
MISCELLANEOUS PROVISIONS
39. Regulations.
The Minister may make regulations—
(a) as to any matter required or permitted by this Act to be prescribed by regulation;
(b) in consultation with the Minister of Finance, prescribing the tariff of fees payable in respect of proceedings before the Copyright Tribunal referred to in section 29 (1);
(c) in consultation with the Minister of Finance, prescribing the remuneration and allowances of members of the advisory committee referred to in section 40, and of its subcommittees, and the conditions upon which such members shall be appointed; and
(cA) in consultation with the Minister of Finance, providing for the establishment, composition, funding and functions of collecting societies contemplated in section 9A, and any other matter that it may be necessary or expedient to regulate for the proper functioning of such societies;
[Para. (cA) inserted by s. 4 of Act 9 of 2002.]
(d) generally, as to any matter which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.
40. Advisory committee.
(1) (a) The Minister shall appoint an advisory committee consisting of a judge or a senior advocate of the Supreme Court of South Africa as chairman and such ex officio and other members as the Minister may from time to time determine.
[Para. (a) substituted by s. 4 (a) of Act No. 61 of 1989.]
(b) A member of the advisory committee shall hold office for such period as the Minister may direct and shall be eligible for reappointment upon the expiration of his period of office.
(2) The advisory committee shall as to witnesses and their evidence have the powers of a commission under the Commissions Act, 1947 (Act No. 8 of 1947).
(3) The advisory committee may from time to time make recommendations to the Minister in regard to any amendments to this Act and to the Trade Marks Act, 1963 (Act No. 62 of 1963), the Designs Act, 1967 (Act No. 57 of 1967), and the Patents Act, 1978 (Act No. 57 of 1978), and shall advise the Minister on any matter referred to it by the Minister.
[Sub-s. (3) substituted by s. 4 (b) of Act No. 61 of 1989.]
(4) (a) The advisory committee may constitute and maintain subcommittees.
[Para. (a) substituted by s. 4 (c) of Act No. 61 of 1989.]
(b) The advisory committee shall appoint as members of the subcommittees such of its members and such other persons and for such periods of office as the advisory committee may from time to time determine.
(5) The advisory committee may call to its assistance any person it may deem necessary to assist it with, or to investigate matters relating to, the functions referred to in subsection (3).

[Sub-s. (5) substituted by s. 4 (d) of Act No. 61 of 1989.]
(6) The Registrar shall be responsible for the administration of the advisory committee and the subcommittees.
41. Savings.
(1) Nothing in this Act shall affect any right or privilege of the State or of any other person under any law not expressly repealed, amended or modified by this Act.
[Sub-s. (1) substituted by s. 31 (a) of Act No. 125 of 1992.]
(2) Nothing in this Act shall affect the right of the state or of any person deriving title from the state to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise, including any article forfeited by virtue of this Act or of any enactment repealed by this Act.
(3) The provisions of this Act shall not derogate from any rule of law relating to confidential or privileged information, unlawful competition or personality rights.
[Sub-s. (3) substituted by s. 31 (b) of Act No. 125 of 1992.]
(4) Subject to the preceding provisions of this section, no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.
42. . . . . .
[S. 42 repealed by s. 32 of Act No. 125 of 1992.]
43. Application to work made before commencement of Act.
This Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter: Provided that—
(a) nothing in this Act contained shall—
(i) subject to paragraph (d), affect the ownership, duration or existence of any copyright which subsists under the Copyright Act, 1965 (Act No. 63 of 1965); or
(ii) subject to paragraph (c), be construed as creating copyright in any type of work in which copyright could not subsist prior to 11 September 1965;
[Para. (a) amended by s. 14 (a) of Act No. 52 of 1984 and substituted by s. 33 (a) of Act No. 125 of 1992.]
(b) . . . . . .
[Para. (b) deleted by s. 14 (b) of Act No. 52 of 1984.]
(b) the copyright in a cinematograph film made before the commencement of this Act shall be governed by the relevant provisions of this Act, subject to the qualification, in the case of a cinematograph film treated as an original dramatic work under section 35 of the Third Schedule to the Designs Act, 1916 (Act No. 9 of 1916)—
(i) that the owner of the copyright shall, if so required, remunerate the person who is the owner of a copyright in that original dramatical work for the purposes of that Act, which remuneration shall be determined by arbitration if agreement thereon cannot be reached; and
(ii) that the owner of the copyright in the cinematograph film or any person deriving rights in respect of the cinematograph film from such owner shall in

excercising such rights in the cinematograph film be deemed not to infringe any rights in such original dramatical work under the said Act; and

(iii) that an act performed by virtue of a licence granted by the owner of the copyright in the original dramatical work under that Act and in existence before or at the time of coming into force of this subsection, shall be deemed to be performed or have been performed on the authority of the owner of the copyright in the cinematograph film.

[Para. (c) substituted by s. 33 (b) of Act No. 125 of 1992.]

(d) in the determination of the term of copyright contemplated in the proviso to section 3 (2) (a) in the case of a work in respect of which the copyright has expired at the commencement of the Copyright Amendment Act, 1984, on the ground that the period mentioned in the said paragraph has lapsed, it shall be deemed that, subject to any rights acquired by any person after the lapse of that period and before the said commencement, copyright did not expire on that ground.

[Para. (d) added by s. 14 (c) of Act No. 52 of 1984.]

44. Time when a work is made.

(1) For the purposes of this Act a work, except a broadcast or programme-carrying signal, shall be deemed to have been made at the time when it was first reduced to writing, recorded or otherwise reduced to material form.

(2) A broadcast shall be deemed to have been made at the time when it was first broadcast.

(3) A programme-carrying signal shall be deemed to have been made at the time when it was first transmitted by a satellite.

[S. 44 substituted by s. 34 of Act No. 125 of 1992.]

*45. Regulation and control of circulation, presentation 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, presentation or exhibition of any work or production.

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

(3) The circulation, presentation 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 shall not thereby be deprived of his right to a reasonable remuneration, which shall in default of agreement be determined by arbitration.

(Date of commencement to be proclaimed.)

45A. . . . . .

46. Repeal of laws.

The laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule: Provided that any proclamation,

regulation or rule having effect under any provision so repealed and in force immediately prior to the commencement of this Act, shall continue in force after such commencement and may be repealed, amended or altered as if it had been made under this 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 45, which shall come into operation on a date fixed by the State President by proclamation in the Gazette.

Schedule

No. and year of Act	Title	Extent of Repeal
Act No. 63 of 1965	Copyright Act, 1965	The whole, except section 46
Act No. 56 of 1967	Copyright Amendment Act, 1967	The whole
Act No. 75 of 1972	Copyright Amendment Act, 1972	The whole
Act No. 64 of 1975	Copyright Amendment Act, 1975	The whole

COPYRIGHT AMENDMENT ACT

NO. 13 OF 1988

[ASSENTED TO 14 MARCH, 1988]

[DATE OF COMMENCEMENT: 23 MARCH, 1988]

(Unless otherwise indicated)

(Afrikaans text signed by the State President)

ACT

To amend the Copyright Act, 1978, so as to alter the designation of the Minister concerned; to abolish the protection granted for 10 years in respect of copyright in certain artistic works of which authorized reproductions were made; and to repeal the presumptions for proving an infringement of copyright in such works; and to provide for matters connected therewith.

1. Amends section 1 (1) of the Copyright Act, No. 98 of 1978, by substituting the definition of “Minister”.

2. Amends section 15 (3A) of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) deletes paragraph (a) (i) (date of commencement 25 September, 1987); and paragraph (b) deletes paragraph (b) (date of commencement 25 September, 1987).

3. Amends section 26 of the Copyright Act, No. 98 of 1978, by deleting subsection (8) (date of commencement 25 September, 1987).

4. Short title.—This Act shall be called the Copyright Amendment Act, 1988.

COPYRIGHT AMENDMENT ACT

NO. 52 OF 1984

[ASSENTED TO 30 MARCH, 1984]

[DATE OF COMMENCEMENT: 22 JUNE, 1984]

(Unless otherwise indicated)

(Afrikaans text signed by the State President)

ACT

To amend the Copyright Act, 1978, so as to make provision for copyright in published editions; to extend the term of copyright in certain unpublished works; to further define the nature of copyright in cinematograph films and sound recordings; to create certain presumptions in respect of the proof of infringements of copyright in cinematograph films; to create certain new offences; and to make provision for increased penalties; and to provide for incidental matters.

1. Amends section 1 (1) of the Copyright Act, No. 98 of 1978, as follows:—

paragraph (a) adds paragraph (g) to the definition of “author”; paragraph (b) substitutes paragraph (a) of the definition of “infringing copy”; and paragraph (c) inserts the definition of “published edition”.
2. Amends section 2 (1) of the Copyright Act, No. 98 of 1978, by adding paragraph (h).
3. Amends section 3 (2) of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) adds the proviso to paragraph (a); and paragraph (b) adds paragraph (f).
4. Amends section 4 (1) of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) deletes the word “or” at the end of paragraph (c); and paragraph (b) adds paragraph (e).
5. Amends section 5 of the Copyright Act, No. 98 of 1978, by substituting subsection (4).
6. Amends section 8 (1) of the Copyright Act, No. 98 of 1978, by adding paragraph (g).
7. Amends section 9 of the Copyright Act, No. 98 of 1978, by substituting paragraph (b) (date of commencement 1 April, 1989).
8 and 9. Insert respectively sections 11A and 19A in the Copyright Act, No. 98 of 1978.
10. Amends section 26 of the Copyright Act, No. 98 of 1978, by adding subsections (9) and (10).
11. Amends section 27 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsection (6); and paragraph (c) adds subsection (8).
12. Substitutes section 28 of the Copyright Act, No. 98 of 1978.
13. Amends section 37 (1) of the Copyright Act, No. 98 of 1978, by substituting paragraph (a).
14. Amends section 43 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes in paragraph (a) the words preceding subparagraph (i); paragraph (b) deletes paragraph (b); and paragraph (c) adds paragraph (d).
15. Short title and commencement.
(1) This Act shall be called the Copyright Amendment Act, 1984, and shall come into operation on a dated fixed by the State President by proclamation in the Gazette.
(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.
COPYRIGHT AMENDMENT ACT
NO. 61 OF 1989
[ASSENTED TO 17 MAY, 1989]
[DATE OF COMMENCEMENT: 1 APRIL, 1989]
(Unless otherwise indicated)
(English text signed by the State President)
ACT
To amend the Copyright Act, 1978, so as to make provision relating to importing, selling and distribution in connection with the nature of copyright in cinematograph films and sound recordings; to provide that certain infringements in respect of certain cinematograph films will no longer be an offence; and to extend the functions of the advisory committee; and to provide for matters connected therewith.
1. Amends section 8 (1) of the Copyright Act, No. 98 of 1978, by substituting paragraph (g).

2. Amends section 9 of the Copyright Act, No. 98 of 1978, by substituting paragraph (b).
3. Amends section 27 of the Copyright Act, No. 98 of 1978, by substituting subsection (1).
4. Amends section 40 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes subsection (1) (a) (date of commencement 1 August, 1989); paragraph (b) substitutes subsection (3) (date of commencement 1 August, 1989); paragraph (c) substitutes subsection (4) (a) (date of commencement 1 August, 1989); and paragraph (d) substitutes subsection (5) (date of commencement 1 August, 1989).
5. Short title and commencement.
(1) This Act shall be called the Copyright Amendment Act, 1989, and shall, subject to the provisions of subsection (2), be deemed to have come into operation on 1 April 1989.
(2) Section 4 shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

COPYRIGHT AMENDMENT ACT
NO. 39 OF 1986
[ASSENTED TO 9 APRIL, 1986]
[DATE OF COMMENCEMENT: 23 APRIL, 1986]
(Afrikaans text signed by the State President)
ACT
To amend the Copyright Act, 1978, so as to provide that the exclusive licensee and the exclusive sub-licensee shall have the same rights of action and be entitled to the same legal remedies as the owner of the copyright; and to provide that their rights of action and legal remedies shall be concurrent with those of such owner.
1. Substitutes section 25 of the Copyright Act, No. 98 of 1978.
2. Short title.—This Act shall be called the Copyright Amendment Act, 1986.

COPYRIGHT AMENDMENT ACT
NO. 56 OF 1980
[ASSENTED TO 5 MAY, 1980]
[DATE OF COMMENCEMENT: 23 MAY, 1980]
(English text signed by the State President)
ACT
To amend the Copyright Act, 1978, so as to provide that originality shall be a requirement for copyright in any work; to apply certain provisions applying to a work, also to a substantial part of such work; to further define a diffusion service for certain purposes; to further define the circumstances in which reproduction of a work shall be permitted; to determine ownership of copyright; and to effect certain textual alterations; and to provide for matters connected therewith.
1. Amends section 1 of the Copyright Act, No. 98 of 1978, by inserting subsection (2A).
2. Amends section 2 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes in subsection (1) the words preceding paragraph (a); and paragraph (b) substitutes subsection (2).
3. Amends section 6 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes the words preceding paragraph (a); and paragraph (b) substitutes paragraph (e).
4. Amends section 7 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes the words preceding paragraph (a); and paragraph (b) substitutes paragraph (d).

5. Amends section 8 (1) of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes the words preceding paragraph (a); and paragraph (b) substitutes paragraph (d).
6. Substitutes section 9 of the Copyright Act, No. 98 of 1978.
7. Amends section 10 of the Copyright Act, No. 98 of 1978, by substituting the words preceding paragraph (a).
8 and 9. Substitute respectively sections 13 and 21 of the Copyright Act, No. 98 of 1978.
10. Short title.—This Act shall be called the Copyright Amendment Act, 1980.

COPYRIGHT AMENDMENT ACT
NO. 66 OF 1983
[ASSENTED TO 20 MAY, 1983]
[DATE OF COMMENCEMENT: 17 OCTOBER, 1983]
(except ss. 4 and 5 to be proclaimed)
(English text signed by the State President)

ACT

To amend the Copyright Act, 1978, with respect to certain definitions; so as to limit copyright in certain artistic works of which three-dimensional reproductions were made available to the public; to facilitate the establishment of certain facts in actions brought by virtue of certain provisions of the said Act; to make further provision for the regulation and control of the distribution, performance or exhibition of works without the consent of the copyright owner; and to make provision for the regulation and control of the reproduction or adaptation of certain artistic works without the consent of the copyright owner; and to provide for incidental matters.

1. Amends section 1 (1) of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes paragraph (c) of the definition of “artistic work”; paragraph (b) substitutes the definition of “drawing”; paragraph (c) substitutes the definition of “Minister”; and paragraph (d) adds paragraph (c) to the definition of “reproduction”.
2. Amends section 15 of the Copyright Act, No. 98 of 1978, by inserting subsection (3A).
3. Amends section 26 of the Copyright Act, No. 98 of 1978, by adding subsection (8).
4. Substitution of section 45 of Act 98 of 1978.—The following section is hereby substituted for section 45 of the principal Act:

“Regulation and control of distribution, performance or exhibition of works.

45. (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 distribution, performance or exhibition of any work.
(2) Such regulations may empower any person specified therein to prohibit the distribution, performance or exhibition of any such work or to authorize the distribution, performance or exhibition thereof on such conditions as may be specified in those regulations
(3) The distribution, performance or exhibition of any 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 may have had to obtain a reasonable remuneration, which shall in default of agreement be determined by arbitration.”.

(Date of commencement to be proclaimed.)
5. Insertion of section 45A in Act 98 of 1978.

The following section is hereby inserted in the principal Act after section 45:
“Regulation and control of the reproduction or adaptation of artistic works.
45A. (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 the making available to the public of reproductions or adaptations, of any artistic work.
(2) Such regulations may empower any person specified therein to authorize the reproduction or adaptation, or the making available 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 making available 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 may have had to obtain a reasonable remuneration, which shall in default of agreement be determined by arbitration.”.
(Date of commencement to be proclaimed.)
6. Short title and commencement.
(1) This Act shall be called the Copyright Amendment Act, 1983, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.
(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.
COPYRIGHT AMENDMENT ACT
NO. 125 OF 1992
[ASSENTED TO 2 JULY, 1992]
[DATE OF COMMENCEMENT: 10 JULY, 1992]
(Afrikaans text signed by the State President)
ACT
To amend the Copyright Act, 1978, so as to amend, delete or insert certain definitions; to make provision that computer programs be eligible for copyright as a separate category of work; to further provide for the conditions to be met before works become eligible for copyright; to further regulate copyright in broadcasts and programme-carrying signals; to further provide for the protection of the moral rights of the author of a work; to further provide for dealing with the infringement of copyright and for the remedies available upon such infringement; to further provide for presumptions in proceedings relating to infringement of copyright; to further prescribe penalties for infringements of copyright; to further provide for the seizure of imported infringing copies; to further regulate the procedure relating to applications to the Copyright Tribunal; to extend the powers of the Copyright Tribunal regarding the granting of licences; and to make provision for appeals against decisions of the Copyright Tribunal; and to provide for matters connected therewith.
1. Amends section 1 of the Copyright Act, No. 98 of 1978, as follows: paragraph (a) adds paragraph (d) to the definition of “adaptation” in subsection (1); paragraph (b) substitutes paragraph (c) of the definition of “artistic work” in subsection (1); paragraph (c) substitutes paragraphs (c), (e) and (f) of the definition of “author” in subsection (1); paragraph (d) adds paragraphs (h) and (i) to the definition of “author” in subsection (1); paragraph (e) substitutes the definition of “broadcast” in subsection (1); paragraph (f) substitutes the definition of “cinematograph film” in subsection (1); paragraph

(g) inserts the definition of “computer program” in subsection (1); paragraph (h) substitutes the definition of “copy” in subsection (1); paragraph (i) substitutes the definition of “distribution” in subsection (1); paragraph (j) substitutes the definition of “distributor” in subsection (1); paragraph (k) substitutes the definition of “emitted signal” in subsection (1); paragraph (l) substitutes the definition of “infringing copy” in subsection (1); paragraph (m) deletes the definition of “licensed” in subsection (1); paragraph (n) substitutes the definition of “licence scheme” in subsection (1); paragraph (o) deletes the definition of “licensing body” in subsection (1); paragraph (p) substitutes the definition of “literary work” in subsection (1); paragraph (q) inserts the definition of “musical work” in subsection (1); paragraph (r) substitutes the definition of “performance” in subsection (1); paragraph (s) substitutes the definition of “plate” in subsection (1); paragraph (t) substitutes the definition of “programme” in subsection (1); paragraph (u) inserts the definition of “programme-carrying signal” in subsection (1); paragraph (v) substitutes the definition of “sound recording” in subsection (1); paragraph (w) inserts the definition of “work” in subsection (1); and paragraph (x) adds subsections (4) and (5).

2. Amends section 2 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes subsection (1) (d); paragraph (b) adds subsection (1) (i); paragraph (c) substitutes subsection (2); and paragraph (d) inserts subsection (2A).

3. Amends section 3 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsection (2) (b); and paragraph (c) substitutes subsection (3) (a).

4. Amends section 4 (1) of the Copyright Act, No. 98 of 1978, by inserting paragraph (f).

5. Amends section 5 of the Copyright Act, No. 98 of 1978, by substituting subsection (4).

6. Amends section 6 of the Copyright Act, No. 98 of 1978, by substituting paragraph (b).

7. Amends section 7 of the Copyright Act, No. 98 of 1978, by substituting paragraph (b).

8. Amends section 8 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes subsection (1) (a); paragraph (b) substitutes subsection (1) (g); and paragraph (c) deletes subsection (2).

9. Amends section 10 of the Copyright Act, No. 98 of 1978, by substituting paragraph (a).

10. Inserts section 11B in the Copyright Act, No. 98 of 1978.

11. Amends section 12 of the Copyright Act, No. 98 of 1978, as follows paragraph (a) substitutes the words preceding subsection (1) (a); paragraph (b) substitutes the words following upon subsection (1) (c) (ii); paragraph (c) substitutes subsection (9); paragraph (d) substitutes subsection (10); paragraph (e) substitutes subsection (12); and paragraph (f) adds subsection (13).

12. Substitutes section 14 of the Copyright Act, No. 98 of 1978.

13. Amends section 15 of the Copyright Act, No. 98 of 1978, by substituting subsection (4).

14 to 17 inclusive. Substitute respectively sections 16, 17, 18 and 19A of the Copyright Act, No. 98 of 1978.

18. Inserts section 19B in the Copyright Act, No. 98 of 1978.

19. Substitutes section 20 of the Copyright Act, No. 98 of 1978.
20. Amends section 23 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes subsection (1); paragraph (b) deletes the word “or” at the end of subsection (2) (b), adds the word “or” at the end of subsection (2) (c) and inserts subsection (2) (d); and paragraph (c) deletes subsection (4).
21. Amends section 24 of the Copyright Act, No. 98 of 1978 as follows:— paragraph (a) substitutes subsection (1); paragraph (b) inserts subsections (1A), (1B) and (1C); and paragraph (c) substitutes subsection (2).
22. Amends section 25 of the Copyright Act, No. 98 of 1978, by adding subsection (2), the existing section becoming subsection (1).
23. Substitutes section 26 of the Copyright Act, No. 98 of 1978.
24. Amends section 27 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes subsection (6); and paragraph (b) deletes subsections (7) and (8).
25. Amends section 28 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes the words preceding subsection (1) (a); and paragraph (b) substitutes subsection (5).
26. Amends section 29 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes subsection (3) (c) (v); and paragraph (b) adds subsection (6).
27 and 28. Substitute respectively sections 30 and 36 of the Copyright Act, No. 98 of 1978.
29. Amends section 37 (1) of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes paragraph (a); and paragraph (b) substitutes paragraph (e).
30. Repeals section 38 of the Copyright Act, No. 98 of 1978.
31. Amends section 41 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsection (3).
32. Repeals section 42 of the Copyright Act, No. 98 of 1978.
33. Amends section 43 of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) substitutes paragraph (a); and paragraph (b) substitutes paragraph (c).
34. Substitutes section 44 of the Copyright Act, No. 98 of 1978.
35. Short title.—This Act shall be called the Copyright Amendment Act, 1992.

COPYRIGHT AMENDMENT ACT
NO. 9 OF 2002
[ASSENTED TO 18 JUNE, 2002]
[DATE OF COMMENCEMENT: 25 JUNE, 2002]
(English text signed by the President)
ACT

To amend the Copyright Act, 1978, so as to define an expression and to amend a definition; and to make further provision regarding the nature of copyright in sound recordings; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—
1. Amends section 1 (1) of the Copyright Act, No. 98 of 1978, as follows:— paragraph (a) inserts the difinition of “collecting society”; and paragraph (b) substitutes the definiton of “Minister”.
2. Substitutes section 9 of the Copyright Act, No. 98 of 1978.
3. Inserts section 9A in the Copyright Act, No. 98 of 1978.

4. Amends section 39 of the Copyright Act, No. 98 of 1978, by inserting paragraph (cA).
5. Short title.—This Act is called the Copyright Amendment Act, 2002

APPENDIX TWO

PARTICIPANT INFORMATION SHEET





School of Human & Community Development
Private Bag 3, Wits 2050, South Africa. Telephone: +27 11-717-4500/2/3/4. Fax: +27-11-717-4559

Dear Sir/Madam

My name is Bernadette King and I am currently completing my Masters degree in Industrial Psychology at the University of the Witwatersrand in Johannesburg. Part of the requirements for the completion of this degree is the submission of a research report. This research aims to look at one's knowledge of Intellectual Property laws and the effect it has, if any, on attitudes to unauthorised copying of software and moral behaviour.

I would like to invite you to participate in this research. If you would like to participate in this research I would appreciate it if you could complete the attached questionnaire, which should take no more than ten minutes of your time. The questions do not have any right or wrong answers, and so I encourage you to be as honest as possible. Your participation is entirely voluntary, and you will not be advantaged or disadvantaged for participating or choosing not to participate in the study.

Once you have completed the questionnaire, you may seal it in the accompanying envelope and then place this in the sealed box, which will be put in a convenient location. At no point are you required to submit your name or any identifying features so that your responses will be kept entirely anonymous. The analysis will only report general trends and differences between groups and therefore your responses will also be confidential.

If you choose to complete and return the questionnaire this will be considered to be your consent to participate in the study. If you would like any further information regarding the study of the results of the study please feel free to contact me at Bernadette.King@gmail.com.

Yours faithfully

Bernadette King

APPENDIX THREE

QUESTIONNAIRE

Section 1:

BACKGROUND BIOGRAPHICAL QUESTIONS

These questions are used for descriptive purposes only. Please mark the box that best describes you:

What is your gender?

Male	Female

What is your age in years?

13-19	20-29	30-39	40-49	50-59	60+

What is your race?

African	Indian	Coloured	White	Other

What is your highest level of education?

Primary School	High School	Matric	Diploma course	Undergraduate	Postgraduate

What is your current occupation?

Student/Pupil	Employed/ Professional	Employed Semi/Professional	Self-Employed	Unemployed	Retired

What sector do you work in?

IT	Legal	Sales & Marketing	Technical	Consulting	Education	Engineering	Finance	Government	HR

If other, Please Specify _____

Approximate years of computer use?

Less than 1 year	1-5 years	5-10 years	10-15 years	15-20 years	More than 20 years

How many hours a day do you use a computer?

1 – 5 hours	5 – 10 hours	15 – 20 hours	20 + hours

How frequently (per week) do you use programming packages (e.g. C++, Java, Perl, etc.)?

Not applicable or Never	Less than once a week	Once to a few times a week	Up to 2 hours every day	2 – 8 hours every day	More than 40 hours every week

How frequently (per week) do you use office programs (e.g. word processing, spreadsheet, etc. applications)?

Not applicable or Never	Less than once a week	Once to a few times a week	Up to 2 hours every day	2 – 8 hours every day	More than 40 hours every week

How frequently (per week) do you use technical software (e.g. statistical, accounting, DTP, CAD, SAP, etc. applications)?

Not applicable or Never	Less than once a week	Once to a few times a week	Up to 2 hours every day	2 – 8 hours every day	More than 40 hours every week

How frequently do you use computer games (e.g. Quake, Warcraft, etc.)?

Not applicable or Never	Less than once a week	Once to a few times a week	Up to 2 hours every day	2 – 8 hours every day	More than 40 hours every week

How frequently (per week) do you use the Internet?

Not applicable or Never	Less than once a week	Once to a few times a week	Up to 2 hours every day	2 – 8 hours every day	More than 40 hours every week

SECTION 2 - ATTITUDES TO UNAUTHORISED COPYING OF SOFTWARE

For the following questions please indicate your degree of agreement or disagreement with the following statements:

I would feel guilty about being in possession of unauthorised copies of software.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

I would not feel badly about making unauthorised copies of software.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

I would feel guilty about giving my close friends unauthorised copies of copyrighted software.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

I feel that making unauthorised copies of software is fine.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

SECTION 3– LEVELS OF MORAL DVELOPMENT

I think it is okay to use unauthorised copies of software, as it is unlikely that you will be given a fine.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

It is not okay to use unauthorised copies of software because it damages the profits of a software company.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

I think it is alright to use unauthorised copies of software, as it is a way of avoiding high software prices.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

I think it is alright to use unauthorised copies of software if it helps me finish my work.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

If I knew someone was making unauthorised copies of software I would try and make them feel guilty.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

Making unauthorised copies of software for friends or family is fine if it helps them finish their work.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

It is not alright to copy unauthorised software because that would be breaking the law.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

Making unauthorised copies of software would be unfair to software companies.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

The unauthorised copying of software is wrong because it infringes on the rights of the copyright holder.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

It is okay to make unauthorised copies of software if it helps someone maintain a minimum standard of living

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

Unauthorised copying of software is not okay because it causes instability within the software market.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

The unauthorised copying of software is okay because it is generally accepted in my community.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

SECTION 4: KNOWLEDGE OF COPYRIGHT LAWS

It is illegal to make copies of legally purchased software.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

When you buy a copyrighted software program, you usually only buy the right to use the software. The program itself remains the property of the publisher.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

The current copyright Act is called the Copyright Act. No 98 of 1978.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

Copyright shall be infringed by any person, not being the owner of the copyright, who, without the licence of such owner, does or causes any other to do or to authorise.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

To protect one's Intellectual Property is to protect one's ideas.

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree