

WIPO Thematic Project on a *Second Survey on Voluntary Registration & Deposit Systems*

A. COPYRIGHT REGISTRATION AND RECORDATION

1. What is the name and legal status of the copyright registering/recording body in your country?

The name of the registering body is the Companies and Intellectual Property Registration Office, a trading entity within the department of Trade and industry.

2. Please provide full contact details of the copyright registering/recording body, including location of its offices, with indication of the hours they open to public.

(a) Postal address: PO Box 429, Pretoria

(b) Physical address: the dti Campus (Block F-Entfutukweni), 77 Meintjies Street, Sunnyside, Pretoria

(c) Customer Contact Centre: 0861 843 384

(d) Web address: www.cipro.gov.za

(e) Email address: info@cipro.gov.za

(f) Fax No. 0861 833 384

(g) Regulation 45 (1) of the Registration of Copyright in Cinematograph Films Act regulations of 1980, provides:

The Office is open to the public from Mondays to Fridays from 08:30 to 12:00 and from 13:30 to 15:30 except:

All days proclaimed public holidays in terms of any law; and

Days which may from time to time be notified by a placard posted in a conspicuous place at the Office.

3. Does the copyright registering/recording body have a webpage and e-mail address? If so, please list them.

(a) Web address: www.cipro.gov.za

(b) Email address: info@cipro.gov.za

4. Is the copyright registry interconnected to any other copyright data system?

No

5. Please list relevant national legislation, including regulations, regarding copyright recordation/registration.

- (a) Copyright Act No. 98 of 1978
- (b) Copyright Regulations of 2006
- (c) Performer's Protection Act No. 11 of 1967
- (d) Registration of Copyright in Cinematograph Films Act No. 62 of 1977
- (e) Registration of Copyright in Cinematograph Films Act, Regulations of 1980.

6. What kind of copyright works can be registered/recorded? Is the registration/recordation process different for each type of copyrighted work? Please describe the differences, if any.

Only the registration of copyright in cinematograph films takes place within the registering body, resulting to one registration process.

7. Can the subject matter of related rights (e.g., performances, broadcasts, sound recordings) also be registered/recorded? If yes, is there a different registration/recordation process than for works protected by copyright?

No. The national legislative framework does not provide for registration of related rights.

8. Is there a possibility to record the transfer or licensing of copyright/related rights?

Yes. The provisions of section 20 of Cinematograph Films Act and Regulations 35 to 39 provide for licensing whereas the provisions of section 21 of the Act and Regulations 29 to 33 provides for assignment and transmission of copyright in cinematograph films.

9. Is there a possibility to record a security interest in the copyright or related right? If so, what are the legal requirements and effects of such recordation?

No. The Copyright Act, the Copyright Regulations and the Performers' Protection Act does not provide for recording of a security interest in the copyright and/or related right.

10. What is the legal effect of registration?

Section 30 (1) of the Registration of Copyright in Cinematograph Films Act, No. 62 of 1977 provides for the certificates of the Registrar to be *prima facie* evidence.

The registered certificate facilitates proof in the following instances:

- (a) That copyright subsists in a particular cinematograph film in South Africa; and
- (b) That a given person is the owner of the copyright in the film.

This makes it easier for copyright owners in infringement proceedings, civil or criminal.

11. Is copyright registration/recordation mandatory or voluntary in the following circumstances?

(a) Recognition of creation?

Voluntary. Section 6 (1) of the Registration of Copyright in Cinematograph Films Act provides that any person claiming to be the owner of the copyright in a cinematograph film by virtue of the provisions of the Copyright Act, 1965, and who is desirous of registering it, shall apply to the Registrar.

(b) Transfer of rights?

Mandatory. Section 22 (1) of the Copyright Act No. 98 of 1978 provides that copyright shall be transmissible as movable property by assignment, testamentary disposition or by operation of law.

Section 21 (2) of the Registration of Copyright in Cinematograph Films Act No. 62 of 1977, makes it voluntary for the owner of copyright to apply to the Registering authority to transfer ownership.

Section 23 (1) makes it mandatory for a person who becomes entitled by assignment or transmission to the copyright in a cinematograph film to make an application to the Registrar to effect transfer.

(c) Initiation of judicial proceedings?

The owner of copyright work or right-holder bears the responsibility of initiating civil claim against any infringement by a third party. The state has the responsibility to institute criminal proceedings against any third party infringing the copyrighted works. Copyright Act provides for such proceedings.

(d) Other changes in title/ownership (such as leasing)?

12. Do courts in your country recognise copyright registrations affected by public authorities in other countries? If yes, is recognition automatic or is a local procedure required to validate or otherwise give effect to the foreign registration?

Registration of copyright by public authorities in other countries is not recognized by our courts as protection is territorial, therefore local registration should take place to validate such registration.

13. What are the requirements for registration?

(a) What are the mandatory elements of the request for registration/recordation?

Regulation 9 (1) of the Registration of Copyright in Cinematograph Films Act, Regulations of 1980, provides that an application for registration of copyright in a cinematograph film shall comprise the following documents:

1. Form RF1, in duplicate, one copy of which shall be signed by the Registrar and returned to the applicant as proof of lodging.
2. Form RF2 in duplicate.
3. Statement of case giving particulars as required by subregulation 9 (2), verified by a sworn declaration made on Form RF9 by the author or by some person authorised to act on his behalf and approved by the Registrar.
4. In the event that the applicant is not the author of the cinematograph film, appropriate documentary proof of his title or authority to apply to the satisfaction of the Registrar.
5. Any other relevant supporting duly authenticated documents or copies thereof.
6. An abstract on Form RF3, in duplicate.

(b) Does the request need to be submitted in a specific form?

Yes. Regulation 3 and Schedule 2 of the Registration of Copyright in Cinematograph Films Act, Regulations of 1980, list the prescribed/specific forms as follows:

1. Form OA, notice of non-completion of registration
2. Form OB, certificate of registration
3. Form OC, certificate of assignment
4. Form OD, certificate of registration of a licensee
5. Form OE, certificate of change of name
6. Form OF, certificate
7. Form RF1, application form and acknowledgement of receipt
8. Form RF2, register of copyright in cinematograph films
9. Form RF3, publication particulars and abstract
10. Form RF4, application, notification or request to the Registrar
11. Form RF5, notice of opposition/intervention
12. Form RF6, form of counterstatement
13. Form RF7, consent to: informal opposition proceedings; appeal to appellate division
14. Form RF8, application for substitution of applicant or register the assignee as subsequent owner
15. Form RF9, sworn declaration in support of statement of case accompanying Form RF1, RF8, or Rf10
16. Form RF10, application for registration or cancellation of registration of a licensee

Can the request be submitted by the post?

Yes. Regulation 5 (1) of the Registration of Copyright in Cinematograph Films Act, Regulations of 1980, provides that an application, statement, notice or other document authorised or required to be lodged, left, made of given with, to or at the Office or with or to the Registrar may be sent through the post.

Can the request be submitted electronically?

No. The relevant legislative framework does not provide for electronic lodgement of copyright applications.

(c) Is there a deposit requirement, that is, must a copy of the work be submitted with the registration request?

Yes. Regulation 9 (6) of the Registration of Copyright in Cinematograph Films Act, Regulations of 1980, states that the Registrar may also, in his discretion, call for a deposit in the Office of a specimen or copy of the cinematograph film.

If so, can it be submitted in digital form?

No. The relevant legislative framework does not provide for electronic lodgement of copyright applications.

(d) Is there a registration/recordation fee? If so, how much is the registration/recordation fee?

Yes. Regulation 2 (c) of the Registration of Copyright in Cinematograph Films Act, Regulations of 1980, as amended provides for registration fees and the current amount being R 510.

(e) What is the average time taken to complete the registration/recordation process?

The application process for registration of copyright in cinematograph films is approximately three (3) calendar months.

14. Are foreigners allowed to register/record their creations?

Yes. Section 6 (1) of the Registration of Copyright in Cinematograph Films Act provides that any person claiming to be the owner of the copyright in a cinematograph film by virtue of the provisions of the Copyright Act, 1965, and who is desirous of registering it, shall apply to the Registrar.

Are people without legal residence in your country allowed to register/record their creations?

Yes. The provisions of section 6 (1) of the Act, are not specific in defining as to who is "any person".

Is there a different registration/recordation process for domestic as opposed to foreign works or objects of related rights?

No.

15. Are the files stored in digital form?

No.

16. What criteria are followed for classification of the registrations/recordations (including chronology/name of right owner/name of work or related right/type of work or subject matter of related rights, etc)? Is it possible to correct or update relevant information?

All registrations are given application numbers when captured into the system. Yes it is possible to correct or update the relevant information.

17. Does a system have a search facility?

Yes. Regulation 11 (2) stipulates that the Registrar shall maintain an alphabetical index of the names of all applicants for register of copyright in cinematograph films and registered owners thereof and may also maintain an alphabetical index of the names of all assignees of copyright in cinematograph films and registered licensees thereof, and Regulation (3) stipulates that the Registrar shall maintain an alphabetical index of the titles of all cinematograph films which are the subjects of applications or registrations.

18. Is it accessible by the public?

Yes. In terms of Regulation 45 (1) of the Registration of Copyright in Cinematograph Films Act, Regulations of 1980, the Registrar's office will be open to the public.

Is the search facility available online?

No.

19. Is access granted to the work registered or its copies?

Yes. Regulation 11 (4) of the Registration of Copyright in Cinematograph Films Act, Regulations of 1980 prescribes that the register may, on payment of the prescribed fees and subject to the provisions of the Act, be inspected at all convenient times during office hours by the public.

20. Does the general public have access to other documents submitted or to any information regarding the work registered/recorded?

Yes. Regulation 11 (4) of the Registration of Copyright in Cinematograph Films Act, Regulations of 1980 prescribes that the register may, on payment of the prescribed fees and subject to the provisions of the Act, be inspected at all convenient times during office hours by the public.

21. Does your country have legislation dealing specifically with "orphan works" i.e. works in respect of which the right owner can not be identified and/or located (e.g. a compulsory licence or a limitation on liability)? Please briefly describe the main elements of that legislation.

No

22. Independently of whether your country has legislation on the subject, are there industry practices in your country aimed at identifying and/or locating the copyright owner of “orphan works”?

Yes.

23. Does the registering/recording body play a relevant role in the legislation or practice dealing with “orphan works”?

No

24. Is there a system to identify and list recorded/registered works or objects of related rights in the public domain? Is that system automated? Is that information made available to the public?

No

25. If your country has a public registration/recording system, do private institutions or initiatives exist that provide additional mechanisms to access registered/recorded information from the public system?

No

26. Please provide statistics on the following registrations/recordations:

(a) Number per statistical period (last five years)

Year	Statistics
2005	70
2006	147
2007	114
2008	52
2009	73

(b) Number per nationality (last five years)

Not available

(c) Number of inquiries/requests for information filed per statistical period (last five years)

Not available

(d) Number of recordation/registrations whose subject matter has entered the public domain. Global figure/Figure per statistical period (last five years)

Not available

B. LEGAL DEPOSIT

27. Does your country have a legal deposit system/s in place

Yes. South Africa has a legal deposit system in place.

28. Please list relevant national legislation regulating the legal deposit.

Legal Deposit Act No. 54 of 1977 is the relevant national legislation regulating the legal deposit system in South Africa.

29. Is the legal deposit mandatory or voluntary in your country? If mandatory, what are the legal consequences in case of non-compliance?

Legal deposit is mandatory in terms of section 2 subsections (1) and (2) of the Legal Deposit Act. Section 9 of the Act relates to offences and legal consequences in case of non-compliance and the section states thus: s 9 “any publisher who fails to comply with section 2, 3, 4, or 5 (3) shall be guilty of an offence and liable on conviction to a fine not exceeding R 20 000.00”.

30. What are the functions performed by your National legal deposit system (e.g. preservation of cultural heritage: collection of statistical information, etc)?

The national legal deposit system of South Africa provides for the preservation of the national documentary heritage through legal deposit of published documents; to ensure the preservation and cataloguing of, and access to, published documents emanating from, or adapted for South Africa; to provide for access to government information; to provide for a Legal Deposit Committee; and to provide for matters connected therewith.

31. Is there any connection or interaction among legal deposit and copyright protection?

There is a thin line of connection and interaction between legal deposit and copyright. A legal deposit material is not subjected to reproduction or any other act that will violate the intellectual property rights of publishers or primary sources of information. Any action to reproduce or convert the legally deposited material should firstly be authorized by the copyright holder.

32. Does your national legislation have any provision in regard to making copies or adapting formats of deposited works for preservation purposes? If so, please clarify under which terms and conditions.

The Legal Deposit Act (No. 54 of 1997) does not have any provision with regard to making copies of deposited material. However, legal depositories rely on the provision of the Copyright Act (No. 98 of 1978). In terms of adapting format for a legal deposit material, Part 2 of Government Gazette 22340 of 8 June 2001 relates to format and quality of legal deposits, and paragraph 7 of regulations make provision that “in order to preserve the master, the place of legal deposit may make one copy exclusively for in-house archival. It may also be converted to another electronic medium for preservation purposes only, at no cost to the publishers”.

33. What is the object of legal deposit? Please list all types or categories of material subject to legal deposit (e.g. Print Material, such as books, serials, government publication; Non-Print Material, such as music and audiovisual works, broadcast material).

The object of legal deposit is to collect, accession, preserve and make available the documentary heritage of South Africa. The following versions and type of material are subject to be supplied: books (standard and luxury editions); microforms; maps; musical texts; posters; serial publications; cinematographic films; electronic documents; sound recordings; videos and multimedia.

34. Does legal deposit apply upon production/printing of content or after its distribution?

Section 4 of the Legal Deposit Act states that “unless otherwise prescribed, the publisher shall dispatch a document contemplated in section 2 (1) and furnish the information contemplated in section 2 (2) within 14 days of the day on which the document is published”.

35. Does legal deposit apply to material printed in your country but distributed abroad? Is there any type or category of material exempted from legal deposit for policy reasons?

The legal deposit system applies to material “published” and distributed in South Africa and not abroad. Any material published abroad and distributed in South Africa is not subjective to legal deposit. Section 5 (2) of the Legal Deposit Act relates to exemption and states that “if a place of legal deposit does not require a particular document, or a particular category of documents, to which the provisions of section 2 (1) apply, the head of such place of deposit may exempt the publisher in writing from the obligation to supply a copy of such document or category of documents to that place of legal deposit.

The general public may have access to legal deposit material on the premises of the Film, Archives, but may not copy anything unless they can produce written proof of authorization from the copyright holder.

36. Is there any specific regulation in regard to material published in electronic format? If so, does the regulation distinguish between on-line and off-line material? Please clarify relevant differences.

Paragraph 5, of Part 2 relates to the regulation of format and quality of legal deposit and states that “a dynamic electronic document shall be supplied only on instructions from the State Library, which shall specify the format or modality of access that it requires”. The regulation does not distinguish between on-line and off-line material.

37. How many copies does a depositor have to deposit? Are there special conditions for limited or deluxe editions?

Unless otherwise exempted from supplying a “document”, the depositor is required to supply one copy of publication per place of legal deposit. Neither the Legal Deposit Act nor its regulations outline the special conditions for limited or *de luxe* editions. The regulations thus give a definition of what *de luxe* or luxury edition is: “a special edition of a book of which more than one edition is published where the special edition

is distinguished from other editions of that book by its larger dimensions, the inclusion of additional content of a decorative or aesthetic nature, or its manufacture from materials which render the edition more costly than any other edition”.

38. Who is/are the subject/subjects responsible for delivering the legal deposit?

Publishers (both commercial and non-commercial); government departments and parastatals are responsible for the supply of legal deposit

39. What are the time requirements for legal deposit?

Time of deposit is within 14 days of the day on which the document is published.

40. Is there a payment or compensation involved in legal deposit? If so, Please indicate its amount.

No compensation is involved in the South African legal deposit.

41. What is/are the entity/entities responsible for acting as legal depository?

Entities responsible for acting as legal depositories in South Africa are: (I) The National Library of South Africa (both Pretoria and Cape Town campuses); (ii) Library of Parliament; (iii) Msunduzi Municipal Library; (iv) Mangaung Public Library Services; and (v) the National Film, Video and Sound Archives.

42. Does the general public have access to legally deposited materials? If so, please explain under which terms and conditions.

The general public have access to legally deposited material in line with section 7 (1) (c) of the Legal Deposit Act. In terms of the above section, a place of legal deposit shall, subject to such limitations as may be prescribed, ensure freedom of access to the documents supplied in terms of section 2 (1).

43. Do/does the depository/depositories provide publicly available search facilities? If so, are they accessible on-line?

Yes, legal deposit material is available on-line through Millennium System connected to SACat (managed and maintained by Sabinet) and WorldCat.

44. Is legal deposit linked to any number or code? Is there any relation with the International Standard Books Number (ISBN) with the International Standard Serial Number (ISSN) and other such codes?

The legal deposit is linked to the international standard number office at the National Library of South Africa.

45 Please provide statistics on the number of deposits per year for the following items (last five years); a) print material; b) musical works; c) audiovisual works.

The legal deposit material for the last five years is as follows:

2004:

Multimedia = 195*

Sound Recordings = 145*

Sundries = 335*

Videos = 68

2005:

Multimedia = 200*

Sound Recordings = 160*

Sundries = 350*

Videos = 75*

2006:

Multimedia = 210*

Sound Recordings = 175*

Sundries = 400*

Videos = 90*

2007:

Cinematographic Films = 1

Multimedia = 13

Musical Texts = 2

Sound Recordings = 789

Sundries = 232

Videos = 96

2008:

Multimedia = 100*

Sound Recordings = 5069*

Sundries = 250*

Videos = 190*

*** = Educated estimates**