

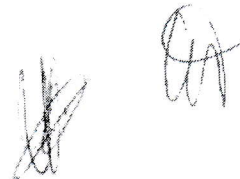
My experience and expertise

10. I hold the degrees Bachelor of Arts (Law), attained in 1964, Bachelor of Laws, attained in 1966, and Doctor of Laws, attained in 1989. All of these degrees were conferred on me by the University of Stellenbosch. My doctoral thesis was entitled "The Application of the Copyright Act, 1978, to Works made prior to 1979".
11. By way of a figurative footnote, I mention that my thesis dealt with the origins of copyright law, its introduction into South Africa in the seventeenth century and its evolution in this country during the following three centuries up to 1988. It showed how the final statutory version of the law, the Copyright Act, 1978, was essentially British law, closely based on the then current British Copyright Act, 1956, modified and adapted to meet the requirements of the 1971 Paris Act of the Berne Convention for the Protection of Literary and Artistic Works, 1986 (the "Berne Convention").
12. South Africa had signed the 1948 Brussels Act of the Berne Convention as one of its founding parties. The previous South African Copyright Act of 1965 was compliant with the Brussels Act, as was the British Act of 1956. Today, South Africa has been bound to the Paris Act of the Berne Convention since 1995 by virtue of its accession to the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), an instrument of the World Trade Organization.
13. The Berne Convention is administered by the World Intellectual Property Organization ("WIPO") and forms the cornerstone of international copyright law.



It lays down minimum standards with which member countries' copyright laws must comply.

14. In 1972, I commenced practising as a specialist intellectual property attorney with Spoor & Fisher, one of the leading law firms in South Africa specialising in intellectual property ("IP"). I served as a partner of the firm for thirty-five years until my retirement in 2010, although I have continued to act as a consultant to the firm, and others, from time to time since that date.
15. My fields of practice were trade mark law, unlawful competition and copyright. Copyright was my chief love. During my career I acted in more than fifty High Court cases involving this branch of the law. These cases included virtually all the leading copyright cases during this period. Probably my best-known case is *Griesel NO v Walt Disney Enterprises*, in which I acted for the benefit of the estate of the late Solomon Linda in regard to the copyright in his song "Mbube" which evolved into the world famous song "The Lion Sleeps Tonight."
16. In my practice, I acted for both copyright owners and defendants in copyright infringement cases. The fields of copyright that I covered in these cases included literary, artistic and musical works, computer programs, cinematograph films, sound recordings, broadcasts and published editions. I thus gained insights into how copyright functioned in all these fields of endeavour and the many nuances involved in the exercise and infringement of copyright.
17. I am a fellow of the South African Institute of Intellectual Property Lawyers, and I am a past president of the Institute, a position that I held while I was a partner at Spoor & Fisher.

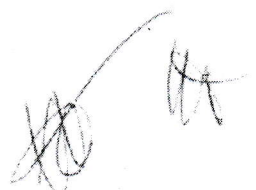


18. Upon my retirement from Spoor & Fisher in 2010 I was requested to set up and operate a Chair of Intellectual Property Law at Stellenbosch University. I took on, and held, this position and role until the end of 2015, when I retired from it, having achieved my goal of establishing a centre of excellence in IP law at the University. It offers specialized post-graduate qualifications (including diplomas to non-legal graduates) in IP, makes IP law accessible, and more familiar, to the public at large, and aspires to act as the custodian of the well-being and proper development of IP law, in particular copyright. A professorship was conferred on me by the University and since my retirement from it I have had the status of Emeritus Professor.
19. At various stages during my career with Spoor & Fisher, I acted as a guest lecturer in copyright law at the Universities of Cape Town, Witwatersrand, Stellenbosch, Johannesburg and Rhodes. I also lectured this subject to candidates for the Patent Attorneys and Trade Mark Practitioners qualifications offered by the South African Institute of Intellectual Property Law. I frequently spoke on copyright at both foreign and domestic seminars, workshops, conferences and the like, as well as programs conducted by WIPO. I have continued with these activities up to the present time.
20. I have also been extensively involved in the development and preparation of legislation, throughout my career:
- 20.1. Before the Copyright Act, 1978 was adopted, the Registrar of Patents, Copyright and Designs (who drafted the Act) held meetings with a consultative committee comprising representatives of stakeholders from all walks of copyright life, including the Bar Council (which was



represented by eminent counsel, Sydney Kentridge and Chris Plewman), the Transvaal Law Society (as it then was), and the South African Institute of Patent Agents (now known as the South African Institute of Intellectual Property Lawyers). I represented the latter organisation and participated in those engagements on its behalf.

- 20.2. On enactment, the Copyright Act made provision, in section 40, for a mandatory statutory committee to advise the relevant Minister on matters pertaining to Copyright (the ambit of the Committee was subsequently broadened to include all IP fields). I was appointed to this committee from the outset and served on it for a period of twenty years until the late 1990s. Upon the broadening of the ambit of the Committee, I was appointed as the Chairman of the Copyright Sub-committee.
- 20.3. As part of my activities on the Advisory Committee, I participated actively in the drafting of all IP legislation adopted during that period.
- 20.4. I drafted part of the Regulations published under the Registration of Copyright in Cinematograph Films Act, 1977, which was also adopted pursuant to the deliberations of the consultative committee referred to above. I was involved in the drafting of the Copyright Regulations, 1978, (issued under the Copyright Act) which included the various exceptions provided for in terms of section 13 of the Act, as well as subsequent amendments to them, including further exceptions in terms of that section.
- 20.5. I was the principal draftsman of the Copyright Amendment Acts, 1980, 1983, 1984, 1986, 1988, 1989 and 1992, and of the Counterfeit Goods



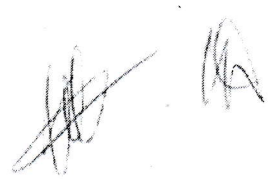
Act, 1997, which dealt inter alia with Copyright. At the request of the Department of Trade and Industries (as it was then known), I conceived and drafted section 15A of the Merchandise Marks Act, 1941, which was introduced into that Act in 2007 to counter the problem of so-called "ambush marketing," prevalent at major international sporting events such as the Cricket World Cup and Soccer World Cup which were staged in South Africa.

20.6. I also served on a small committee of experts which assisted the Department of Science and Technology with the drafting of the Protection, Promotion and Management of Indigenous Knowledge Systems Act, 2019.

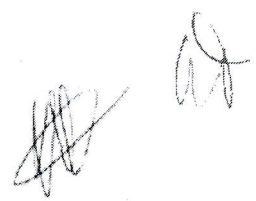
21. I have, in addition, written and published extensively on IP issues in general and copyright in particular:

21.1. In 1987, I first published, through Juta Publishers, a textbook on copyright law, entitled Dean: Handbook of South African Copyright Law. That loose-leaf volume has been updated fourteen times since its original publication in order to keep it up to date on new developments in the law. It has become the standard textbook on South African copyright law and has been quoted with approval on many occasions in the High Court and in the Supreme Court of Appeal.

21.2. In 1991, I contributed the chapter on copyright in Butterworths Forms and Precedents. I also contributed a chapter on South African copyright in Macdonald, Suthersanen and Garrigues: Copyright World Law and Practice published by Thompson/Sweet and Maxwell in 2004.

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- 21.3. In 2014, Oxford University Press published Dean & Dyer: Introduction to Intellectual Property Law. This book, which is intended to be used by students and others wishing to obtain a basis grounding in IP Law, was conceived and compiled by me as the principal editor. It includes a chapter on copyright. It is used as the standard text at most South African universities.
- 21.4. In addition, I have published over a hundred articles in South African and international legal journals, including the Canadian Intellectual Property Review, Copyright World, European Intellectual Property Review, Managing Intellectual Property, South African Mercantile Law Journal, South African Law Journal, De Rebus, Stellenbosch Law Review, Journal of Contemporary Roman Dutch Law, and South African Intellectual Property Law Journal (of which I am a member of the Advisory Board).
- 21.5. My most recent publication is a booklet entitled A Gift of Multiplication – Essays on the Copyright Amendment Bill, published by Juta in October 2021. In this booklet I comment on the Copyright Amendment Bill and discuss some of its major shortcomings, including the proposed section 19D.
22. I humbly submit that I can justifiably lay claim to being an expert on South African copyright law. I have devoted much of my career to serving the interests of the copyright community and law in South Africa, and to promoting a fair, balanced, rational, practicable, workable and technically sound Copyright Act of world class. It is in this context that I make the present application.

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