

IS YOUR INTELLECTUAL PROPERTY PROTECTED OVER THE INTERNET??

Category: Commercial Law, Media and OTT
written by Manyani Maseko | May 30, 2013

In today's modern era of media and technology, it is quite surprising that the South African law on copyright and intellectual property has fallen behind its international counterparts, as it still does not provide for technological developments such as the internet. A vast amount of material such as music, program, video, art, literary works, graphics etc. are but a click away to anyone anywhere in the world due to the fact that they have limited or no copyright protection over the internet. It is shocking that despite the fact that the internet plays an integral part in today's society, our legislature has not amended our own copyright laws in order to afford creators of original works placed on the internet their due copyright and intellectual protection. Cyberspace (as it is commonly known all around the world) is an ever growing environment for piracy and intellectual property crime. "Cyberspace criminals" as I like to call them are quite capable of using, adapting, copying, stealing or distributing someone else's material inclusive of their intellectual property without their consent, as the internet makes it fairly easy to do so.

However, thanks to the Berne Convention for Protection of Literary and Artistic Works ("the Berne Convention"), the principle of "national treatment" is applicable and implies that our South African legislation also applies to internet activities. Therefore, copyright protection is afforded to materials posted on the internet as well. In South Africa, the Companies and Intellectual Property Commission ("CIPC") recognises four main types of intellectual property capable of being protected – namely: (1) trademarks; (2) copyrights; (3) patents; and (4) design. The CIPC's website provides a brief description on each type of intellectual property and the requirements (if any) for their registration on its website: www.cipc.co.za. Today, many companies and individuals whose main source of customers may stem from the internet have already started registering (for example) their brand names, corporate names, slogans, logos, inventions, designs etc. for fear of them being used illegally by other individuals.

As tedious as it may sound, it may therefore be prudent for creators of original material to register their intellectual property in such material and keep a constant eye on the World Wide Web to ensure that their material is not being used without their permission. In the event that such material is being used illegally despite it being registered with the CIPC, a creator may seek legal recourse against the guilty third party. Additionally to court procedures, there are other processes such as mediation and arbitration that creators may use to order to enforce their intellectual property rights.

This may all be disconcerting to the creators of the materials; however, for as long as South Africa's copyright and intellectual property law lacks in respect of materials being placed on the internet and we are still subject to rely on the Berne Convention, the creators of such materials run the risk of their materials downloaded at a whim. So you may want to think twice about sharing your intellectual property online for the world to steal!!