

## DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Government Notice no. R2530 in Government Gazette no. 6252 of 22 December 1978

### COPYRIGHT ACT NO. 78 OF 1978

As amended by:

Government Notice no. R1211 published in Government Gazette no. 9775 of 7 June 1985

Government Notice no. 1375 published in Government Gazette no. 9807 of 28 June 1985.

# Copyright Regulations

The Minister of Economic Affairs has, by virtue of the powers vested in him in terms of section 39 of the Copyright Act, 1978 (Act no. 98 of 1978), made the following regulations and with the concurrence of the Minister of Finance prescribed the matters in respect of which fees shall be payable and the tariff of such fees set forth in Schedule 2 hereto:

## Interpretation

1. In these regulations, unless the context otherwise indicates-
  - (i) **'archives depot'** means an archives depot referred to in section 5 of the Archives Act, 1962 (Act no. 6 of 1962);
  - (ii) **'Commissioner'** means the person performing the functions of the Tribunal referred to in Chapter 4 of these regulations;
  - (iii) **'cumulative effect'** means-
    - (a) not more than one short poem, article, story or essay or two excerpts copied from the same author or more than three short poems, articles, stories or essays from the same collective work or periodical volume for the purpose of instructing a particular class during any one term; and
    - (b) not more than nine instances of such multiple copying for one course of instruction to a particular class during any one term;
  - (iiiA) **'local authority'** means-
    - (a) any institution, council or body contemplated in section 84(l)(f) of the Provincial Government Act, 1961 (Act 32 of 1961), and includes
    - (b) any statutory body designated as a local authority in terms of paragraph (c) of the definition of **'local authority'** in section 1 of the National Building Regulations and Building Standards Act, 1977 (Act no. 103 of 1977);
  - (iv) **'teacher'** means any person giving instruction or doing research at any school, university or any other educational institution, by whatever name he may be called;
  - (v) **'the Act'** means the Copyright Act, 1978 (Act no. 98 of 1978), and any expression to which a meaning has been assigned in the Act bears the same meaning when used in these regulations;
  - (vi) **'the office'** and **'the Registrar'** means, respectively, the office of the Registrar of Patents where the court records of the Tribunal shall be kept, and the Registrar of Patents as defined by section 7 of the Patents Act, 1978 (Act no. 57 of 1978);
  - (vii) **'the Tribunal'** means the Copyright Tribunal established by section 29 of the Act.

## CHAPTER 1

### *Reproduction regulations (Section 13)*

#### Permitted reproduction

2. The reproduction of a work in terms of section 13 of the Act shall be permitted-

- (a) except where otherwise provided, if not more than one copy of a reasonable portion of the work is made, having regard to the totality and meaning of the work; and
- (b) if the cumulative effect of the reproductions does not conflict with the normal exploitation of the work to the unreasonable prejudice of the legal interest and residuary rights of the author.

### **Reproduction by library or archive depot**

3. Subject to the provisions of regulation 2, a library or archives depot or any of its employees acting within the scope of their employment may, after reproduction of a copy of a work, distribute such copy on the following conditions:
- (a) The reproduction or distribution shall not be made with any intention of deriving direct or indirect commercial advantage;
  - (b) the collections of the library or archive depot shall be open to the public or available to researchers affiliated to the library or archive depot or to the institution of which it is a part, and to other persons doing research in a specialised field;
  - (c) the reproduction of the work shall incorporate a copyright warning;
  - (d) the rights of reproduction and distribution shall apply to a copy of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit, for research use, in another library or archive depot: Provided that the copy reproduced is to be placed in the collection of the library or archive depot;
  - (e) the right of reproduction shall apply to a copy of a published work duplicated in facsimile form solely for the purpose of replacement of a copy that is deteriorating or that has been damaged, lost, or stolen: Provided that the library or archive depot has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price;
  - (f) the rights of reproduction and distribution shall apply to a copy, made from the collection of a library or archive depot to which the user addressed his request or from that of another library or archive depot, of not more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy of a reasonable portion of any other copyrighted work: Provided that the copy shall become the property of the user and the library or archive depot has had no notice that the copy would be used for any purpose other than for private study or the personal or private use of the person using the work;
  - (g) the library or archive depot shall display prominently, at the place where orders are accepted, and include on its order form, a copyright warning in terms of regulation 6;
  - (h) the rights of reproduction and distribution shall apply to the entire work, or to a substantial portion of it, copied from the collection of a library or archive depot to which the user addressed his request or from that of another library or archive depot, if the library or archive depot has first determined, on the basis of a reasonable investigation, that an unused copy of the copyrighted work cannot be obtained at a fair price: Provided that-
    - (i) the copy shall become the property of the user, and the library or archive depot has had no notice that the copy would be used for any purpose other than private study or the personal or private use of the person using the work; and
    - (ii) the library or archive depot shall display prominently, at the place where orders are accepted, and include on its order form, a copyright warning in terms of regulation 6.

### **Exemptions and savings**

4. Nothing in these regulations contained-

- (a) shall be construed as imposing any liability for copyright infringement upon a library or archive depot or its employees for the unsupervised use of reproducing equipment located on its premises: Provided that a notice that the making of a copy may be subject to the Copyright Act, 1978, shall be prominently displayed on such equipment;
- (b) shall absolve any person who uses such reproducing equipment or who requests a copy under regulation 3(f) from liability for copyright infringement for any such act, or for any later use of such copy, if it exceeds the extent of the copying permitted under the Act;
- (c) shall in any way affect any contractual obligations assumed at any time by the library or archive depot when it obtained a copy of a work for its collection.

### **Multiple copies**

- 5. (1) The right of reproduction and distribution shall extend to the isolated and unrelated reproduction or distribution of a single copy of the same material on separate occasions, but shall not extend to cases where the library or archive depot or its employee-
  - (a) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies of the same material other than periodical articles of a scientific or technical nature, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or
  - (b) engages in the systematic reproduction or distribution of single or multiple copies of material described in regulation 3 (f), other than periodical articles of a technical or scientific nature: Provided that nothing in this regulation shall prevent a library or archive depot from participating in interlibrary arrangements that are not designed to or do not have the effect of providing the library or archive depot receiving such copies for distribution with such aggregate quantities that they are a substitute for a subscription to or purchase of such work.
- (2) The rights of reproduction and distribution shall not apply to works other than literary works, except that no such limitation shall apply with respect to rights under regulation 3 (d) and (e), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with regulation 3 (f) and (h).

## **Copyright warning**

6. (1) A warning of copyright shall consist of a verbatim production of the notice of this subregulation in such size and form and displayed in such manner as to conform to subregulation (2). Copyright warnings shall be displayed at the place where orders for copies are accepted by libraries and archive depots and shall be incorporated in all forms supplied by libraries and archive depots and used by their subscribers or the general public for ordering copies, and where unsupervised equipment is located.

## **COPYRIGHT WARNING**

The Copyright Act, 1978, governs the making of photocopies or other reproductions of copyrighted material. Under the provisions of the Act libraries and archive depots are authorised to supply photocopies or other reproductions. One of these provisions is that the photocopy or reproduction is not to be used for any purpose other than private study or personal or private use.

If a user makes a request for, or later uses, a photocopy or reproduction for purposes not permitted by the Act, that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its opinion, fulfilment of the order might involve violation of the Act.

- (2) Copyright warning required to be displayed by subregulation (1) shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and position as to be clearly visible, legible and comprehensible to a casual observer in the immediate vicinity of the place where orders are accepted or where unsupervised equipment is located.
- (3) The copyright warning required to be incorporated in order forms by subregulation (1) shall be printed within a box located prominently on the order form itself, either on the face of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such a manner as to be clearly legible, comprehensible and readily apparent to a casual reader of the form.

## **Multiple copies for class-room use**

7. Subject to the provisions of regulation 2, multiple copies (not exceeding one copy per pupil per course) may be made by or for a teacher for class-room use or discussion.

## **Copies for teachers**

8. Subject to the provisions of regulation 2, a single copy may be made by or for a teacher, at his request, for research, teaching or preparation for teaching in a class.

## **Prohibitions on copies for class-room use or for the use of teachers**

9. Notwithstanding the provisions contained in regulations 7 and 8, the following copying shall be prohibited:
  - (a) Copies may not be used to create or replace or substitute anthologies, compilations or collective works;
  - (b) no copies may be made of or from works intended to be ephemeral, including workbooks, exercises, standardised tests and test booklets and answer sheets and similar ephemeral material;
  - (c) copying may not -
    - (i) be used as a substitute for the purchase of books, publishers' reprints, or periodicals; and

- (ii) be repeated in respect of the same material by the same teacher from term to term.

### **Reproductions of building plans by a local authority**

- 9A.** Notwithstanding the provisions of regulation 2 the copyright in a building plan in respect of which the original or a reproduction is lodged for purposes of record at an office of a local authority shall not be infringed by the making of a reproduction of such plan by the person in charge of such office or by any other person acting by or with the authority of such person, if the owner of land upon which a building has been erected in accordance with that plan requires copies of the plan or any portion thereof for the purpose of making additions or alterations to such building.

## **CHAPTER 2**

### ***Sound recording royalties (Section 14)***

#### **Notices**

- 10.** The notice required by section 14(1)(b) and (2) of the Act shall contain the following particulars:
- (a) The name and address of the person by whom the notice is given, hereinafter referred to as 'the manufacturer';
  - (b) the name of the work to which the notice refers, hereinafter referred to as 'the work', a description sufficient to identify it and the name of the author and publisher;
  - (c) a statement that the manufacturer intends to make records of the work or an adaptation thereof and the address at which he intends to make such records;
  - (d) sufficient particulars to identify the record of the work or an adaptation thereof made in or imported into the Republic in such circumstances that section 14 of the Act applies to the records which the manufacturer intends to make;
  - (e) the type or types of record on which it is intended to reproduce the work or adaptation and an estimate of the number of recordings of each type that will be manufactured for the purpose of being supplied for retail sale;
  - (f) the retail selling price as hereinafter defined of the records or, where it is intended to reproduce the work on more than one type of record, the retail selling price of each type of record which the manufacturer intends to make, and the amount of royalty payable on each record;
  - (g) the earliest date on which any of the records will be delivered to a purchaser or otherwise supplies as aforesaid;
  - (h) whether any other musical, literary or dramatic work is to be reproduced on the same record with the work and in relation to any such other work, the particulars specified in subparagraph (b).

## **Agreements in respect of royalties payable**

- 11.(1)** Royalties may be paid in such manner and at such times as are specified in any agreement that may be concluded between the manufacturer and the owner of the copyright.
- (2)** In the absence of any agreement to the contrary, the following provisions of this regulation shall apply to the manner in which and the time at which royalties shall be paid and to the steps to be taken to ensure the receipt of royalties by the owner of the copyright.
- (3)** The notice shall, not less than 30 days before any record on which the work is reproduced is supplied to a purchaser or otherwise made available as aforesaid, be sent by registered post or published by advertisement as follows:
  - (a)** If the name and an address within the Republic of the owner of the copyright, or of his agent for the receipt of notice, are known, or can by reasonable enquiry be ascertained, the notice shall be sent to such owner or agent at such address;
  - (b)** if such name and address are not known and cannot by reasonable enquiry be ascertained, an advertisement shall be inserted in the Gazette giving the particulars specified in paragraphs (a), (b), (c) and (d) of subregulation (1) and stating an address from which the particulars specified in paragraphs (e), (f), (g) and (h) of subregulation (1) may be obtained.
- (4)** If, within 14 days of the date of the notice prescribed in regulation 10, the owner of the copyright intimates to the manufacturer, by notice in writing sent by registered post, some convenient place within the Republic from which adhesive labels can be obtained, the manufacturer shall by notice in writing specify the number and denomination of the labels he requires and at the same time tender a sum equivalent to the amount of royalty represented by the labels required.
- (5)** If, within 14 days of receipt of the notice required by subregulation (4) to be given by the manufacturer, the copyright owner supplies the labels required, the manufacturer shall not deliver to a purchaser or otherwise make available for the purpose of its being sold by retail any record made by him to which the notice prescribed in regulation 10 refers unless there is attached thereto, or (if the type of record is such that it is not reasonably practicable to attach an adhesive label thereto) to the container in which it is intended to be delivered to a retail purchaser, a label supplied as aforesaid and representing the amount of the royalty payable in respect of that record.
- (6)**
  - (a)** If the owner of the copyright does not take the steps specified in subregulations (4) and (5) within the times therein respectively specified, the manufacturer may deliver to a purchaser or otherwise make available as aforesaid any record to which the notice specified in regulation 10 hereof refers, without complying with the requirements of subregulations (4) and (5).
  - (b)** The manufacturer shall keep an amount of all records delivered by him to a purchaser or otherwise made available as aforesaid in accordance with this subregulation, and the amount of the royalties due to the owner of the copyright in respect thereof shall be transferred to a special account and held in trust for the owner of the copyright.
- (7)** If the manufacturer takes the steps specified in subregulations (4), (5) and (6), as the case may be, with respect to any records, the taking of those steps shall be deemed to constitute the payment of royalties on those records in accordance with section 14(1)(d) of the Act.
- (8)** For the purpose of this regulation 'the date of the notice prescribed in regulation 10' means-
  - (a)** in cases where the notice is required to be sent by registered post, two calendar days after the posting of such notice;
  - (b)** in cases where the notice is required to be advertised in the Gazette, the date of such advertisement.
- (9)** The adhesive label supplied as aforesaid shall be an adhesive label, square in shape, the design to be entirely enclosed within a circle, and the side of the label to be not greater than 2 cm in length. The label shall not contain the effigy of any person, nor any word,

mark or design such as to suggest that the label is issued by or under the authority of the Government for the purpose of denoting any tax payable to the Government.

### **Retail selling price**

12. The 'retail selling price of a record' shall mean-
- (a) the manufacturer's bona fide recommended retail selling price, less any tax or duty, or both, imposed by a Government authority; or
  - (b) if there is no recommended manufacturer's retail selling price, then the manufacturer's highest published wholesale list price of that type of record, less Government tax or duty, or both, included therein, plus 50 per cent thereof; or
  - (c) if there is an agreement in existence between the manufacturer and the copyright owner defining the retail selling price, then such agreed price shall apply.

### **Enquiries**

- 13.(1) The enquiries referred to in section 14(4) of the Act shall be directed to the owner of the copyright by name or his duly authorised agent (if his name is not known and cannot by reasonable enquiry be ascertained) in general terms as 'the owner of the copyright' in the work in respect of which the enquiries are made, and shall contain-
- (a) a statement of the name of the musical or literary work in respect of which the enquiries are made, a description sufficient to identify it and the name of the author and publisher;
  - (b) a statement of the name and address of the person making the enquiries;
  - (c) a statement that a record of the work or an adaptation thereof has previously been made in or imported into the Republic for the purposes of retail sale, with the trade name (if any) and a description of such record sufficient to identify it;
  - (d) an enquiry whether the record so described was made in or imported into the Republic for the purposes of retail sale by or with the licence of the owner of the copyright.
- (2) The enquiries shall be sent by registered post or published by advertisement as follows:
- (a) If an address within the Republic of the owner of the copyright or his agent is known or can by reasonable enquiry be ascertained, the enquiries shall be sent to such address;
  - (b) if such an address is not known and cannot by reasonable enquiry be ascertained, the enquiries shall be advertised in the Gazette.
- (3) The prescribed time for reply to such enquiries shall be-
- (a) to an enquiry duly sent by registered post, 14 calendar days after the second day following the posting of such enquiry;
  - (b) to an enquiry duly advertised in the Gazette, 14 calendar days after the date of such advertisement.

### **Determination of royalties**

- 14.(1) The royalty payable in terms of section 14(1)(d) of the Act shall be 5 per cent of the retail selling price of the record as defined in regulation 12: Provided that, if the amount so calculated includes a fraction of half a cent, that fraction shall be reckoned as one half of a cent, and if, but for this proviso, the calculation would include a fraction of more than half a cent, that fraction shall be one cent.
- (2) In the case of a record comprising two or more musical works (with or without other material and either in their original form or in the form of adaptations) in which copyright subsists:-
- (a) the minimum royalty in the absence of an agreement as envisaged in regulation 11(1) shall be one half of one cent in respect of each of those works; and

- (b) if the owners of the copyright in the works are different persons, the royalty shall be apportioned among them in such manner as may be agreed upon by them or as may, in default of agreement, be determined by arbitration.

### **Inspection**

15. Upon demand made by the owner of copyright or his duly authorised agent, the manufacturer shall permit the said person-
- (1) to carry out a physical inspection of and check all stocks held by or on behalf of the manufacturer;
  - (2) to examine the stock records of the manufacturer to check and determine-
    - (a) the number of records manufactured;
    - (b) the number of records sold or delivered; and
    - (c) the number of records on hand.

### **Separate agreement**

16. It shall be competent for any persons who would otherwise be bound by the terms of the regulations in this Chapter to enter into a written agreement in terms of which they agree that other provisions shall apply between them in regard to the matters covered by these regulations; Provided, however, that such agreement is not incompatible with the Act.

## **CHAPTER 3**

### ***Authors of cinematograph films (section 26(6))***

#### **Inscription of name on cinematograph films**

17. For the purpose of section 26(6) the name of the author of a cinematograph film may appear in any sequence or in any frame of the film, whether the name is visible or not when the film is shown as a moving picture: Provided that such name shall be preceded or followed by the word 'copyright', or 'auteursreg', or 'kopiereg', or the symbol c, or o, or k, or the words 'all rights reserved' or 'alle regte voorbehou', or any other obvious or ordinary symbol therefor or abbreviation thereof, either with or without letters or digits indicating a date.



## **Registered trade mark indication**

- 18.** The name of the author referred to in regulation 17 may be indicated by-
- (a) a trade mark of which the author is the registered proprietor; or
  - (b) a trade mark of which the author is a registered user:
- Provided that such trade mark or registered user has been registered under the Trade Mark Act, 1963 (Act 62 of 1963).

## **CHAPTER 4**

### *Copyright Tribunal* (Sections 29 to 36)

#### **Forms**

- 19.** The forms herein referred to are the forms contained in Schedule 1 to these regulations, and such forms shall be used in all cases to which they apply but may be modified or amended as directed by the Registrar.

#### **Registrar of Copyright Tribunal**

- 20.** The Registrar or any member of his staff delegated by him shall act as Registrar of the Copyright Tribunal.

#### **Commencement of proceedings**

- 21.(1)** A licence scheme may be referred under section 31 of the Act or referred again under section 32, and an application for a declaration that the applicant is entitled to a licence may be made under section 33 by serving on the Registrar a notice substantially in accordance with Form 1, Form 2 or Form 3, as the case may be.
- (2)** In the case of a reference under section 31 or an application under section 33, the organisation or person at whose instance the reference or application is made shall at the time serve a copy of the notice referred to in subregulation (1) on the licensing body or person named in the notice.
  - (3)** In the case of a further reference under section 32, the licensing body, organisation or person at whose instance the further reference is made shall at the same time serve a copy of the notice referred to in subregulation (1) on all the parties to the reference on which the Tribunal made the previous order with respect to the licence scheme.

#### **Application for special leave under section 32(2)**

- 22.(1)** A licensing body, organisation or person desiring to apply for the special leave of the Tribunal under section 32(2) may do so by serving a notice substantially in accordance with Form 4 on the Registrar and on all the parties to the reference on which the Tribunal made the previous order with respect to the licence scheme.
- (2)** The Tribunal shall deal with and dispose of the application as it thinks just, after considering any representations in writing made within 30 days after service of notice of the application by any person on whom the notice was served, and, if the Tribunal thinks fit, after giving the applicant and all such persons as aforesaid an opportunity of being heard on the application.

## **Advertisement of reference or application**

- 23.(1)** Except where the Tribunal otherwise directs, the party originating proceedings shall give notice by advertisement in the Gazette of every reference under section 31 or 32 and of every application under section 33: Provided that a reference by an organisation claiming to be representative of persons requiring licences shall not be advertised until the Tribunal has decided in terms of regulation 24 that the organisation is reasonably representative of such persons.
- (2)** An advertisement under subregulation (1) shall state-
- (a) the name and address of the licensing body, organisation or person at whose instance the reference or application is made;
  - (b) the names and addresses of the licensing body and of all other persons on whom copies of the reference or application have been served;
  - (c) the nature of the reference or application;
  - (d) the time, being not less than 30 days from the publication of the advertisement, within which any organisation or person may apply to the Tribunal to be made a party to the proceedings.

## **Application to be made a party**

- 24.** An application to the Tribunal by any organisation or person claiming to have a substantial interest in the matter in dispute to be made a party to a reference under section 31 or 32 or to an application under section 33 may be made by serving a notice substantially in accordance with Form 5 on the Registrar and on all the parties mentioned in the advertisement required by regulation 23, or, where there has been no such advertisement, then on such persons as the Tribunal may direct.

## **Preliminary questions**

- 25.(1)** A licensing body named in a reference under section 31 or 32 by an organisation claiming to be representative of persons requiring licences may object to the reference on the grounds that the organisation is not reasonably representative of the class of persons it claims to represent.
- (2)** A licensing body, organisation or person at whose instance a reference under section 31 or 32 or an application under section 33 is made, or a licensing body named in any such reference or application, may object to any application by an organisation or person to be made a party to the proceedings on the grounds that such organisation or person has no substantial interest in the matter in dispute.
- (3)** An objection under subregulation (1) or (2) shall be made by serving on the Registrar a notice substantially in accordance with Form 6 or Form 7, as the case may be, within 30 days of service of notice of the reference or application which is the subject of the objection.
- (4)** A copy of the notice required by subregulation (3) shall at the same time be served-
- (a) in the case of an objection to a reference, on the organisation at whose instance the reference is made;
  - (b) in the case of an objection to an application to be made a party to a reference or to an application under section 33, on the organisation or person applying to be made a party and on any licensing body, organisation or person other than the objector entitled to give notice of objection under subregulation (2).
- (5)** Before determining whether the organisation is reasonably representative of the class of person it claims to represent or, as the case may be, whether the organisation or person applying to be made a party to the proceedings has a substantial interest in the matter in dispute, the Tribunal shall give such organisation or person an opportunity of commenting in writing on any objection of which notice has been given under subregulation (3), and may, if it thinks fit, give such organisation or person as aforesaid, the objector and any licensing body or person concerned an opportunity of being heard on the objection.

- (6) If no notice of objection is given under subregulation (3), the Tribunal shall as soon as may be practicable consider whether the organisation at whose instance the reference is made is reasonably representative of the class of persons it claims to represent or, as the case may be, whether the organisation or person applying to be made a party to the proceedings has a substantial interest in the matter in dispute and ought reasonably to be made a party: Provided that the Tribunal shall not reach an adverse decision without giving the organisation or person concerned an opportunity of making representations in writing to the Tribunal or, if the Tribunal thinks fit and such organisation or person so desires, of being heard.
- (7) The Registrar shall give notice in writing of the Tribunal's decision to the organisation at whose instance the reference is made or, as the case may be, to the organisation or person applying to be made a party to the proceedings and to all parties to the proceedings. In the case of a further reference under section 32, notice of the Tribunal's decision shall also be given to any other persons who were parties to the reference on which the Tribunal made the previous order with respect to the licence scheme.

### **Consideration of references and applications**

- 26.(1) The Registrar shall, as soon as is practicable after all preliminary questions have been disposed of under regulation 25, fix a date for the consideration by the Tribunal of every reference under 31 or 32 or application under section 33, and the Registrar shall give not less than 30 days prior notice in writing of the date so fixed to all parties to the reference or application.
- (2) Every party wishing to make representations in writing to the Tribunal shall serve a copy of his representations on the Registrar and on every other party to the proceedings not less than 14 days before the date fixed under subregulation (1).
- (3) Any party wishing the reference or application to be dealt with at a hearing before the Tribunal may serve notice to that effect in accordance with Form 8 on the Registrar and on every other party to the proceedings not less than seven days before the date fixed under subregulation (1), and in that case the Tribunal shall fix a place and time for the hearing, and the Registrar shall give notice in writing of the place and time so fixed to all parties to the proceedings.
- (4) If no party serves notice requesting a hearing under subregulation (3), the Tribunal shall proceed to consider the reference or application and shall make such order thereon as it thinks just after considering all representations received by the Tribunal in support of and in opposition to the reference or application, as the case may be.

### **Procedure at hearing**

- 27.(1) If notice is given by any party requesting a hearing under regulation 26(3), every party to the reference or application shall be entitled to attend the hearing and to address the Tribunal and call oral evidence.
- (2) The hearing shall be in public.
- (3) Subject to the provisions of these regulations, the Tribunal shall, at any hearing or proceedings before it, have all such powers and jurisdiction as are possessed by a judge sitting alone to try a civil action before a provincial division of the Supreme Court, and it may, subject to these regulations, regulate the procedure before it in accordance with the provisions of the Uniform Rules of Court of the Supreme Court of South Africa.

### **Interlocutory applications**

- 28.(1) Any proceedings before the Tribunal not leading to a final order shall be disposed of by the Tribunal.
- (2) The application shall be made in writing, stating the grounds upon which it is made, and shall be sent to the Registrar.

- (3) If all parties to the proceedings consent to the application, it shall be accompanied by consents signed by them or on their behalf; and in any other case, a copy of the application shall, before it is made, be served by the applicant on every other party, and the application shall state that this has been done.
- (4) Any party objecting to the application may, within seven days after receiving a copy thereof, send written notice of objection to the Registrar and to the applicant, and in that case, before disposing of the application, the Tribunal shall consider any objection of which notice has been given as aforesaid and may, if it thinks fit, give all parties concerned an opportunity of being heard.

### **Consolidation of proceedings**

29. If more than one reference under section 31 or 32 relating to the same licence scheme, or more than one application under section 33 relating to the same licensing body or person is pending before the Tribunal, the Tribunal may, if it thinks fit, either of its own motion or on an application made under regulation 28, order that some or all of the references or applications as the case may be, be considered together, and may give such consequential directions as may be necessary: Provided that the Tribunal shall not make an order under this regulation of its own motion without giving all parties concerned a reasonable opportunity of objecting to the proposed order.

### **Disclosure of documents**

- 30.(1) Every party to proceedings before the Tribunal shall send to the Registrar and to every other party a copy of any document relevant to the proceedings which is in that party's possession or control.
  - (2) If any party fails without just cause to comply with the requirements of subregulation (1), the Tribunal may order him to comply and may give such consequential directions concerning the adjournment of the hearing or otherwise as may be necessary and may order any party to pay any costs occasioned by his default.
  - (3) The Tribunal may, if any party fails within the time fixed by it to comply with any order under subregulation (2), order that such party shall be deemed to have abandoned any interest it may have had in the proceedings and dismiss the application or reference, as the case may be and make such order concerning costs as it deems fit.

### **Evidence**

- 31.(1) Evidence at any hearing before the Tribunal shall be given orally or, if the parties agree or the Tribunal so orders, by affidavit, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent for examination and cross-examination.
  - (2) The provisions of regulation 27(3), in so far as they relate to the attendance of witnesses or their failure to attend on a subpoena or order by the Tribunal, shall apply to any witness so subpoenaed or ordered to attend.

### **Right of Audience**

32. In any proceedings before the Tribunal any party may appear and be heard either in person or by counsel or attorney or patent attorney or patent agent.

### **Withdrawal of reference or application**

33. By notice in writing served on the Registrar and on all parties to the proceedings, a reference under section 31 or 32 or an application under section 33 may be withdrawn at any time before it has been finally disposed of, but such withdrawal shall be without prejudice to the Tribunal's power to make an order concerning the payment of costs incurred up to the time of service of the notice: Provided that the Tribunal may proceed

with a reference on the application of the licensing body named therein, notwithstanding the purported withdrawal of the reference by any other party thereto.

### **Decisions of the Tribunal**

- 34.(1)** The final decision of the Tribunal on every reference under section 31 or 32 and on every application under section 33 shall be given in writing and shall include a statement of the Tribunal's reasons.
- (2)** Except where the operation of the order is suspended under regulation 35(4), the Registrar shall send every party to the proceedings a copy of the Tribunal's decision and shall cause a copy to be made available at the office for public inspection.
- (3)** The Registrar may in any case arrange that particulars of the decision shall be advertised in the Patents Journal published under section 14 of the Patents Act, 1978.

### **Application for reference of question of law to Court**

- 35.(1)** An intended application to bring under review in terms of section 36 any decision, ruling or order by the Tribunal shall (unless made at the hearing) be made by notice in writing to the Registrar and may be made at any time within 90 days after the Tribunal has given its decision in the proceedings in which the question arose.
- (2)** Such notice shall be served on all the parties interested in the application who may in any such application be heard by the Court.
- (3)** The set-down for hearing of any matter shall be in accordance with the Uniform Rules of Court of the Supreme of South Africa.
- (4)** The Tribunal may, during the hearing of any matter by the Supreme Court, suspend the operation of any decision, ruling or order made by it until the Supreme Court has finally decided any such matter. Such a suspension shall not exceed a period of six months from the date of the Tribunal's decision, unless the Tribunal, on the application of the parties, extends such period.

### **Costs**

- 36.(1)** The costs of and incidental to any proceedings shall be in the discretion of the Tribunal, which may direct that any party against whom an order for costs is made shall pay to any other party a lump sum by way of costs or such proportion of the costs as it may deem just.
- (2)** When no order for payment of a lump sum has been made, the Registrar shall, if so required by any party to the proceedings, undertake the taxation of any bill of costs, and any proceedings relating to such taxation shall be subject mutatis mutandis to the rules applicable to the taxation of costs by any Registrar of the Supreme Court of South Africa with respect to bills presented to such Registrar for taxation.

### **Fees**

- 37.(1)** The fees to be paid under the Act shall be the fees specified in Schedule 2 to these regulations and shall be payable as follows:
- (a)** By affixing revenue stamps to any document concerned, which stamps may be cancelled by a receiver of revenue or the Registrar; or
- (b)** by impressing a stamp on any document concerned by means of a die approved by the Secretary for Inland Revenue; or
- (c)** in such other manner as the Registrar may direct.
- (2)** The Registrar may refuse to accept any notice or documents lodged with or served on him if not stamped in accordance with Schedule 2, and notices or documents so refused shall not be admissible in any proceedings until duly stamped in accordance with the fees prescribed.

### **Service of documents**

- 38.(1)** Any notice or other document required by these regulations to be served on or sent to any person may be sent to him by pre-paid post at his address for service or, where no address for service has been given, at his registered office, principal place of business or last-known address, and every notice or other document required to be served on or sent to the Tribunal may be sent by pre-paid post to the Registrar at the Patent Office, Pretoria.
- (2)** Any notice or other document required to be served on a licensing body or organisation which is not a body corporate may be sent to the secretary, manager or other similar officer.
- (3)** The Tribunal may direct that service of any notice or other document be dispensed with or effected otherwise than in the manner provided by these regulations.

### **Time**

- 39.(1)** Whenever any time is specified by these regulations within which any act or thing is to be done, such time may be abridged by agreement, or the Registrar or the Commissioner, as the case may be, may extend such time either before or after its expiry.
- (2)** If the last day for the doing of any act falls on a day on which the office is closed and by reason thereof the act cannot be done on that day, such act may be done on the next day on which the office is open.

## **CHAPTER 5**

### ***Miscellaneous***

#### **Office hours**

40. The office shall be open from 08h00 to 12h30 and from 14h00 to 15h30 from Mondays to Fridays, except on the following days:
- (a) All days proclaimed public holidays in terms of any relevant law; and
  - (b) days which may from time to time be notified by a placard posted in a conspicuous place at the office.

#### **Repeal of regulations**

41. These regulations promulgated under Government Notices R. 407 of 18 March 1966, R. 408 of 18 March 1966, R. 414 of 18 March 1966, R. 415 of 18 March 1966 and R. 1289 of 28 July 1972 are hereby repealed.

#### **Short title and commencement**

42. These regulations shall be known as the Copyright Regulations, 1978, and shall come into operation on 1 January 1979.