

Important to protect your digital work

WE ARE living in the digital age. We rely on computer programs and the internet for enjoyment, communication and for business.

Most modern business transactions incorporate digital elements, whether it be in the advertising space, e-commerce or simply concluding an agreement on your personal computer or on an app on your phone.

The obvious risk that businesses face is the ease with which intellectual property, including computer programs, can be manipulated, copied and abused.

The Copyright Act 98 of 1978 protects the “author” of a computer program and grants the author the exclusive rights to, among other things, reproduce, publish or adapt the program.

This is an automatic right conferred upon the author; there is no need to apply for it.

In the case of *Haupt t/a Softcopy v Brewers Marketing Intelligence (Pty) Ltd and Others*, the court held that the author of a computer program had the exclusive right to exploit the work in South Africa.

The pertinent question, however, is who exactly is the author of a computer program?

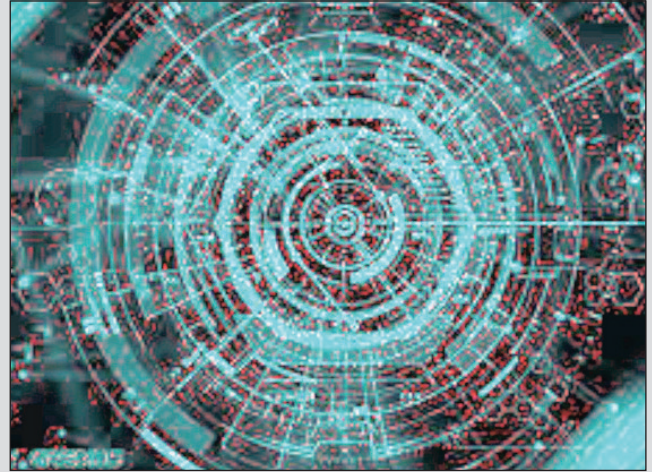
The Copyright Act states that the author of a computer program is the person who exercised control over the making of the computer program. This, in itself, is ambiguous.

For example, who is the author in a situation where an entity briefs a contractor to develop a computer program? Is the contractor entitled to exploit the program for his own use because he physically wrote the code for the program or does the entity own the copyright in the program?

In section 21 of the Copyright Act specific provision is made for circumstances where a “work”, in this case a computer



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program, is produced in the course and scope of the author’s employment.

In those circumstances, the employer may be the owner of the copyright.

The above issue was ventilated in the *Haupt* case where the court stated that the Copyright Act drew a distinction between “control” in the definition of “author” and in respect of a computer program.

The definition of “control” was held to have a wider meaning than control in the employment situation.

Accordingly, a person may be the author of the program even if the creator of the program was an independent contractor.

The court in *Haupt* went further to state that “one does not need to be a computer programmer to be able to control the writing of a computer program”.

Businesses will need to be mindful of protecting their intellectual property rights when concluding agreements with program developers, suppliers, customers and any other person or entity that has access to their intellectual property.

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