

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 582 Cape Town, 10 December 2013 **No. 37148**
Kaapstad,

THE PRESIDENCY

No. 996 10 December 2013

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 28 of 2013: Intellectual Property Laws Amendment Act, 2013

DIE PRESIDENSIE

No. 996 10 Desember 2013

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No 28 van 2013: Wysigingswet op Intellektuele Eindomsreg, 2013

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 9 December 2013)

ACT

To provide for the recognition and protection of certain manifestations of indigenous knowledge as a species of intellectual property; to this end to amend certain laws so as to provide for the protection of relevant manifestations of indigenous knowledge as a species of intellectual property, namely—

- the Performers' Protection Act, 1967, to provide for the recognition and protection of performances of traditional works;
- the Copyright Act, 1978, to provide for the recognition and protection of indigenous works; to provide for the establishment of a National Council in respect of indigenous knowledge; to provide for National Databases for recording indigenous knowledge and to provide for the recording of indigenous works; and to provide for the establishment of a National Trust Fund for Indigenous Knowledge;
- the Trade Marks Act, 1993, to provide for the recognition of indigenous terms and expressions and for the registration of such terms and expressions as trade marks; to create for this purpose a further part of the trade marks register; to provide for the recording of indigenous terms and expressions; and to provide for further protection of geographical indications;
- the Designs Act, 1993, to provide for the recognition and registration of indigenous designs; to create for this purpose a further part of the designs register; and
- to introduce statutory provisions to provide for the establishment of a National Council in respect of indigenous knowledge, a National Database for the recording of indigenous knowledge and a National Trust and Trust Fund for purposes of indigenous knowledge;

and to provide for matters incidental thereto.

PREAMBLE

WHEREAS it is important, in order to give effect to the recognition of cultural values and the freedom to participate in cultural activities as contemplated in sections 30 and 31 of the Constitution of the Republic of South Africa, 1996, that the wealth of indigenous knowledge held by the indigenous people of South Africa be recognised, preserved, protected and promoted and made accessible to the public; and

WHEREAS it is necessary to recognise indigenous knowledge as a valuable economic as well as a cultural resource, and therefore to create a legal dispensation for the commercial exploitation of indigenous knowledge in a manner that will benefit

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit
bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder dui invoegings in bestaande
verordenings aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 9 Desember 2013)

WET

Om voorsiening te maak vir die erkenning en beskerming van sekere manifestasies van inheemse kennis as 'n onderafdeling van intellektuele eiendom; vir dié doel sekere wette te wysig om voorsiening te maak vir die beskerming van toepaslike manifestasies van inheemse kennis as 'n besondere saak van intellektuele eiendom, naamlik—

- die Wet op die Beskerming van Voordraers, 1967, ten einde voorsiening te maak vir die erkenning en beskerming van uitvoerings van tradisionele werke;
- die Wet op Outeursreg, 1978, ten einde voorsiening te maak vir die erkenning en beskerming van inheemse werke; voorsiening te maak vir die instelling van 'n Nasionale Raad ten opsigte van inheemse kennis; voorsiening te maak vir Nasionale Databasisse vir die boekstaving van inheemse kennis en voorsiening te maak vir die boekstaving van inheemse werke; en om voorsiening te maak vir die instelling van 'n Nasionale Trustfonds vir Inheemse Kennis;
- die Wet op Handelsmerke, 1993, ten einde voorsiening te maak vir die erkenning van inheemse terme en uitdrukkings en vir die registrasie van sodanige terme en uitdrukkings as handelsmerke; vir hierdie doel 'n verdere deel van die handelsmerkregister te skep; voorsiening te maak vir die boekstaving van inheemse terme en uitdrukkings; en om voorsiening te maak vir verdere beskerming van geografiese aanduidings;
- die Wet op Modelle, 1993, ten einde voorsiening te maak vir die erkenning en registrasie van inheemse modelle; om vir hierdie doel nog 'n deel van die modelregister te skep; en
- om wetsbepalings in te stel om voorsiening te maak vir die instelling van 'n Nasionale Raad ten opsigte van inheemse kennis, 'n Nasionale Databasis vir die boekstaving van inheemse kennis, en 'n Nasionale Trust en Trustfonds vir doeleindes van inheemse kennis;

en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

AANHEF

NADEMAAL dit belangrik is, ten einde uitvoering te gee aan die erkenning van kulturele waardes en die vryheid om aan kulturele aktiwiteite deel te neem soos beoog in artikels 30 en 31 van die Grondwet van die Republiek van Suid-Afrika, 1996, sodat die rykdom van inheemse kennis van die inheemse mense van Suid-Afrika erken, bewaar, beskerm, bevorder en toeganklik vir die publiek gemaak word; en

NADEMAAL dit nodig is om inheemse kennis as 'n waardevolle ekonomiese asook 'n kulturele hulpbron te erken, en dus om 'n wetsbedeling te skep vir die kommersiële

the country and will ensure that fair financial benefits will also be received by indigenous communities and persons; and

WHEREAS principles have been agreed upon by international bodies, amongst others the World Trade Organisation and the United Nations, confirming that indigenous knowledge should be recognised and protected by appropriate legal instruments, on national level as well as internationally; and

WHEREAS indigenous knowledge includes works, terms, expressions and designs, which are the outcome of the creative ability of the human mind and in that context has aspects which constitute types of intellectual property, so that the intellectual property laws of the country may be used as the legal dispensation and legal tool to provide protection for these appropriate manifestations of indigenous knowledge; and

WHEREAS certain manifestations of indigenous knowledge have already been recognised and protected by the Patents Amendment Act, 2005, and certain further manifestations of indigenous knowledge are to be protected by way of this legislation, appropriate amendments are required to be made to the Performers' Protection Act, 1967, the Copyright Act, 1978, the Trade Marks Act, 1993, and the Designs Act, 1993,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

Amendment of section 1 of Act 11 of 1967, as amended by section 19 of Act 38 of 1997 and section 1 of Act 8 of 2002

1. Section 1 of the Performers' Protection Act, 1967 (Act No.11 of 1967), is hereby amended—

(a) by the insertion in subsection (1) before the definition of "broadcasting" of the following definition:

" 'artistic works' have the meaning assigned to it in the Copyright Act in so far as such works are capable of being performed, and include musical, dramatic, dramatico-musical works and traditional works;";

(b) by the insertion in subsection (1) after the definition of "broadcaster" of the following definition:

" 'cinematograph film' means any fixation of images, or of images and sounds, of a performance with or without other images or sounds;";

(c) by the insertion in subsection (1) after the definition of "collecting society" of the following definitions:

" 'Commission' means the Commission established in terms of section 185 of the Companies Act, 2008 (Act No. 71 of 2008);

'Copyright Act' means the Copyright Act, 1978 (Act No. 98 of 1978);

'Council' means the National Council for Indigenous Knowledge as defined in section 1 of the Copyright Act;

'dramatic works' have the meaning assigned to it in the Copyright Act in so far as such works are capable of being performed, and include musical, dramatic, dramatico-musical works and traditional works;";

(d) by the substitution in subsection (1) for the definition of "fixation" of the following definition:

" 'fixation' includes storage of—

(a) sounds or images or both sounds and images; or

(b) data or signals representing sounds or images or both sounds and images,

in any manner or on any medium so as to be capable of being reproduced or performed;";

(e) by the insertion in subsection (1) after the definition of "fixation" of the following definitions:

" 'literary works' have the meaning assigned to it in the Copyright Act in so far as such works are capable of being performed, and include musical, dramatic, dramatico-musical works and traditional works;

'musical works' have the meaning assigned to it in the Copyright Act in so far as such works are capable of being performed, and include musical, dramatic, dramatico-musical works and traditional works;";

ontginning van inheemse kennis op 'n wyse wat voordelig vir die land is en wat sal verseker dat billike finansiële voordele ook deur die inheemse gemeenskappe en persone ontvang sal word; en

NADEMAAL internasionale liggame, onder andere die Wêreldhandelsorganisasie en die Verenigde Nasies, ooreengekom het op beginsels wat bevestig dat inheemse kennis deur gepaste regsinstrumente erken en beskerm moet word, op nasionale vlak asook internasionaal; en

NADEMAAL inheemse kennis werke, terme, uitdrukkings en modelle insluit wat die uitkoms van die kreatiewe vermoë van die mens se brein is en in daardie samehang aspekte het wat soorte intellektuele eiendom daarstel, sodat die wette op intellektuele eiendom van die land as die regsbedeling en regs gereedskap gebruik kan word om beskerming vir hierdie gepaste manifestasies van inheemse kennis te bied; en

NADEMAAL sekere manifestasies van inheemse kennis reeds deur die Wysigingswet op Patente, 2005, erken en beskerm word en sekere verdere manifestasies van inheemse kennis deur hierdie wetgewing beskerm staan te word, en gepaste wysigings aan die Wet op die Beskerming van Voordraers, 1967, die Wet op Outeursreg, 1978, die Wet op Handelsmerke, 1993, en die Wet op Modelle, 1993, aangebring moet word,

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 11 van 1967, soos gewysig deur artikel 19 van Wet 38 van 1997 en artikel 1 van Wet 8 van 2002

1. Artikel 1 van die Wet op Beskerming van Voordraers, 1967 (Wet No. 11 van 1967), 5
word hierby gewysig—

(a) deur in subartikel (1) voor die omskrywing van “fonogram” die volgende omskrywings in te voeg:

“**‘artistieke werke’** dit wat in die Wet op Outeursreg daaraan 10
toegeskrif word vir sover as sodanige werke uitgevoer kan word, en sluit
musiek-, dramatiese, dramaties-musikale werke en tradisionele werke in;
‘dramatiese werke’ dit wat in die Wet op Outeursreg daaraan toegeken
is vir sover sodanige werke uitgevoer kan word, en sluit musiek-,
dramatiese, dramaties-musikale werke en tradisionele werke in;”;

(b) deur in subartikel (1) na die omskrywing van “insamelingsvereniging” die 15
volgende omskrywing in te voeg:

“**‘Kommissie’** die Kommissie ingestel ingevolge artikel 185 van die
Maatskappywet, 2008 (Wet No. 71 van 2008);

(c) deur in subartikel (1) die omskrywing van “letterkundige en artistieke werke” 20
te skrap;

(d) deur in subartikel (1) voor die omskrywing van “reproduksie” die volgende
omskrywings in te voeg:

“**‘letterkundige werke’** dit wat in die Wet op Outeursreg daaraan
toegeskrif is vir sover sodanige werke uitgevoer kan word, en sluit 25
musiek-, dramatiese, dramaties-musikale en tradisionele werke in;
‘musiekwerke’ dit wat in die Wet op Outeursreg daaraan toegeskrif is
vir sover sodanige werke uitgevoer kan word, en sluit musiek-,
dramatiese, dramaties-musikale werke en tradisionele werke in;
‘Raad’ die Nasionale Raad vir Inheemse Kennis soos omskrif in
artikel 1 van die Wet op Outeursreg;”;

(e) deur in subartikel (1) na die omskrywing van “reproduksie” die volgende
omskrywings in te voeg:

“**‘rolprent’** enige vaslegging van beelde, of van beelde en klanke, van
'n uitvoering met of sonder ander beelde of klanke;
‘tradisionele werk’ dit wat in die Wet op Outeursreg daaraan toegeskrif 35
is, en ook uitdrukkings van volksoorlewing;”;

- (f) by the deletion in subsection (1) of the definition of “literary and artistic works”;
- (g) by the insertion in subsection (1) after the definition of “literary and artistic works” of the following definition:
- “**‘performance’** includes any mode of visual or acoustic presentation of a literary work, musical work, artistic work, dramatic work or work of joint authorship including acting, singing, delivering, declaiming, playing or otherwise performing such work, and includes any such presentation by the operation of a loudspeaker, but excluding such performance by the use of a phonogram, a radio, television, diffusion receiver, by the exhibition of a cinematograph film, by the use of a record, broadcasting, rebroadcasting or transmission in a diffusion service, and **‘perform’** has a corresponding meaning;”;
- (h) by the substitution in subsection (1) for the definition of “performer” of the following definition:
- “**‘performer’** means an actor, singer, musician, dancer or other person who acts, sings, delivers, declaims, plays in or otherwise performs, literary works, musical works, [or] artistic works, dramatic works or works of joint authorship;”;
- (i) by the insertion in subsection (1) after the definition of “phonogram” of the following definition:
- “**‘prescribe’** means prescribe by regulation in terms of this Act, and **‘prescribed’** has a corresponding meaning;”;
- (j) by the addition in subsection (1) after the definition of “reproduction” of the following definitions:
- “**‘traditional work’** has the meaning assigned to it in the Copyright Act, and includes expressions of folklore;
‘works of joint authorship’ have the meaning assigned to it in the Copyright Act in so far as such works are capable of being performed, and include musical, dramatic, dramatico-musical works and traditional works;”;
- (k) by the substitution for subsection (2) of the following subsection:
- “(2) Except in so far as the context otherwise requires, any reference in this Act to the doing of an act in relation to a performance, including a performance of a traditional work, a fixation of a performance or a reproduction of such a fixation, shall be taken to include a reference to the doing of that act in relation to a substantial part of the performance, the fixation or the reproduction, as the case may be.”.

Insertion of sections 8A, 8B, 8C and 8D in Act 11 of 1967

2. The following sections are hereby inserted in the Performers’ Protection Act, 1967 (Act No. 11 of 1967), after section 8:

“Application to performance of traditional work

8A. (1) Subject to the provisions of this section, sections 8B, 8C and 8D the provisions of this Act shall, except in so far as is otherwise provided in the said sections, and in so far as they can be applied, apply to a performance of a traditional work.

(2) Nothing in the sections contemplated in subsection (1) shall be construed as conferring any rights to any person in respect of intellectual property which is not a performance of a traditional work.

- (f) deur in subartikel (1) voor die omskrywing van “vaslegging” die volgende omskrywing in te voeg:
- “**‘uitvoering’** ook enige wyse van visuele of akoestiese aanbieding van ’n letterkundige werk, musiekwerk, artistieke werk, dramatiese werk of werk van gesamentlike outeurskap, ook om die werk deur toneelspel, sang, lewering, voordrag, bespeling of uitvoering op enige ander wyse aan te bied, en sluit die uitvoering daarvan deur die gebruik van ’n luidspreker in, maar nie die uitvoering daarvan met ’n fonogram, of ’n radio, televisie, diffusie-ontvanger, of deur die vertoon van ’n rolprent, deur die gebruik van ’n opname, uitsending, heruitsending of verspreiding in ’n diffusiediens nie, en het **‘uitvoer’** ’n ooreenstemmende betekenis;”;
- (g) deur in subartikel (1) die omskrywing van “vaslegging” deur die volgende omskrywing te vervang:
- “**‘vaslegging’** ook die berging van—
- (a) klanke of beelde of beide klanke en beelde; of
- (b) data of seine wat klanke of beelde of beide klanke en beelde verteenwoordig,
- op enige wyse of in enige medium sodat die reproduksie of uitvoering daarvan moontlik is;”;
- (h) deur in subartikel (1) die omskrywing van “voordraer” deur die volgende omskrywing te vervang:
- “**‘voordraer’** ’n akteur, sanger, musikant, danser of ander persoon wat letterkundige werke, musiekwerke, [of] artistieke werke, dramatiese werke of werke van gesamentlike outeurskap voordra, sing, lewer of opsê of daarin speel of dit andersins uitvoer;”;
- (i) deur in subartikel (1) na die omskrywing van “voordraer” die volgende omskrywings in te voeg:
- “**‘voorskryf’** ingevolge hierdie Wet by regulasie voorskryf en het **‘voorgeskryf’** ’n ooreenstemmende betekenis;”;
- ‘werke van gesamentlike outeurskap’** dit wat in die Wet op Outeursreg daaraan toegeskryf word, vir sover as wat sodanige werke uitgevoer kan word en ook musiek-, dramatiese, dramaties-musikale en tradisionele werke;
- ‘Wet op Outeursreg’** die Wet op Outeursreg, 1978 (Wet No. 98 van 1978);”;
- (j) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Behalwe vir sover die samehang anders vereis, word ’n verwysing in hierdie Wet na die doen van ’n handeling met betrekking tot ’n uitvoering, met inbegrip van ’n uitvoering van ’n tradisionele werk, ’n vaslegging van ’n uitvoering of ’n reproduksie van so ’n vaslegging, uitgelê as ’n verwysing ook na die doen van daardie handeling met betrekking tot ’n aansienlike deel van die uitvoering, die vaslegging of die reproduksie, na gelang van die geval.”.

Invoeging van artikels 8A, 8B, 8C en 8D in Wet 11 van 1967

2. Die volgende artikels word hierby na artikel 8 in die Wet op die Beskerming van Voordraers, 1967 (Wet No. 11 van 1967), ingevoeg:

“Toepassing op uitvoering van tradisionele werk

- 8A.** (1) Behoudens die bepalings van artikel 8B, 8C en 8D is die bepalings van hierdie Wet, buiten vir sover anders in die genoemde artikels bepaal word, en vir sover dit toegepas kan word, van toepassing op ’n uitvoering van ’n tradisionele werk.
- (2) Niks in die artikels in subartikel (1) beoog word geag enige regte te verleen aan ’n persoon ten opsigte van intellektuele eiendom wat nie ’n uitvoering van ’n tradisionele werk is nie.

Disputes

8B. (1) The Commission must accredit certain institutions which have the necessary capacity, to adjudicate any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013.

(2) Any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013, must first be instituted in an institution accredited as contemplated in subsection (1).

(3) No person appearing in proceedings before an institution contemplated in subsection (1) shall have the right to legal representation unless —

(a) the adjudicator and all other parties consent; or

(b) the adjudicator, after considering—

(i) the nature of the questions of law raised by the dispute;

(ii) the relative complexity and importance of the dispute; and

(iii) the comparative ability of the parties to represent themselves in the adjudication,

concludes that it would be unreasonable to expect a party to deal with the adjudication without legal representation.

(4) Any adjudication must take into account existing customary dispute resolution mechanisms.

(5) The decision of the institution referred to in subsection (1) may be served, executed and enforced as if it was an order of the High Court.

(6) Any party to proceedings before an institution referred to in subsection (1) may appeal to a court of law against any decision of such institution, and the appeal must be noted and dealt with in the manner prescribed by law for appeals against a civil order or decision of a single judge.

(7) The Minister shall prescribe the fees, processes and formalities relating to the institution and adjudication of dispute resolution proceedings.

Council

8C. (1) The Council shall function as the Council for performances of traditional works under this Act.

(2) When a performance of a traditional work is performed by several performers as a group, as contemplated in section 6, the Council shall, in the absence of another specifically designated authority, function and be regulated as the authority contemplated in section 6.

Regulations and guidelines

8D. (1) The Minister may, after consultation with the Council, make regulations—

(a) providing for the fees, processes and formalities related to the institution of dispute resolution proceedings set out in section 8B; or

(b) as to any matter required or permitted by this Act to be prescribed.

(2) The Minister may issue guidelines on any aspect of the Intellectual Property Laws Amendment Act, 2013, including—

(a) protection of the performance of a traditional work;

(b) the Council, in so far as it relates to the performance of a traditional work; and

(c) the dispute resolution process set out in section 8B.”.

Amendment of section 1 of Act 98 of 1978, as amended by section 1 of Act 66 of 1983, section 1 of Act 52 of 1984, section 1 of Act 13 of 1988, section 1 of Act 125 of 1992, section 50 of Act 38 of 1997 and section 1 of Act 9 of 2002

3. Section 1 of the Copyright Act, 1978 (Act No. 98 of 1978), is hereby amended—

Geskille

- 8B.** (1) Die Kommissie moet sekere instellings akkrediteer wat die nodige kapasiteit het om enige geskil te bereg wat ontstaan uit die toepassing van die Wysigingswet op Intellektuele Eiendomsreg, 2013.
- (2) 'n Geskil wat ontstaan uit die toepassing van die Wysigingswet op Intellektuele Eiendomsreg, 2013, moet eers by 'n instelling wat soos in subartikel (1) beoog geakkrediteer is, ingestel word. 5
- (3) Geen persoon wat in verrigtinge voor 'n instelling in subartikel (1) beoog verskyn is geregtig op regsverteenvoordinging nie, tensy—
- (a) die beregter en alle ander partye instem; of 10
- (b) die beregter, na oorweging van—
- (i) die aard van die regsrae wat uit die geskil na vore kom;
- (ii) die relatiewe ingewikkeldheid en gewig van die geskil; en
- (iii) die betreklike vermoë van die partye om hulself in die beregting te verteenwoordig, 15
- tot die slotsom kom dat dit onredelik sal wees om van 'n party te verwag om die beregting sonder regsverteenvoordinging te hanteer.
- (4) Enige beregting moet bestaande gewoontereg-geskilbeslegtingsmeganismes in ag neem.
- (5) Die beslissing van die instelling in subartikel (1) bedoel, kan beteken, uitgevoer en toegepas word asof dit 'n bevel van die Hoë Hof is. 20
- (6) 'n Party in verrigtinge voor 'n instelling in subartikel (1) bedoel, kan by 'n geregshof appèl aanteken teen enige beslissing van sodanige instelling, en die appèl moet aangeteken en hanteer word op die wyse soos wetlik voorgeskryf vir appèle teen 'n siviele bevel of besluit van 'n enkele regter. 25
- (7) Die Minister skryf die gelde, prosesse en formaliteite voor in verband met die instelling en beregting van geskilbeslegtingsprosedures.

Raad

- 8C.** (1) Die Raad funksioneer as die Raad vir uitvoerings van tradisionele werke kragtens hierdie Wet. 30
- (2) Wanneer 'n uitvoering van 'n tradisionele werk deur verskeie voordraers as 'n groep uitgevoer word, soos in artikel 6 beoog, funksioneer die Raad, by ontstentenis aan 'n ander spesifiek aangewese gesag, as die in artikel 6 beoogde gesag en word as sodanig gereguleer. 35

Regulasies en riglyne

- 8D.** (1) Die Minister kan, na oorleg met die Raad, regulasies uitvaardig—
- (a) wat voorsiening maak vir die gelde, prosesse en formaliteite in verband met die instelling van geskilbeslegtingsverrigtinge in artikel 8B uiteengesit; of 40
- (b) aangaande enige saak wat hierdie Wet vereis of toelaat om voorgeskryf te word.
- (2) Die Minister kan riglyne uitreik oor enige aspek van die Wysigingswet op Intellektuele Eiendomsreg, 2013, met inbegrip van— 45
- (a) beskerming van die uitvoering van 'n tradisionele werk;
- (b) die Raad, vir sover dit betrekking het op die uitvoering van 'n tradisionele werk; en
- (c) die geskilbeslegtingsproses soos in artikel 8B uiteengesit.”.

Wysiging van artikel 1 van Wet 98 van 1978, soos gewysig deur artikel 1 van Wet 66 van 1983, artikel 1 van Wet 52 van 1984, artikel 1 van Wet 13 van 1988, artikel 1 van Wet 125 van 1992, artikel 50 van Wet 38 van 1997 en artikel 1 van Wet 9 van 2002 50

3. Artikel 1 van die Wet op Outeursreg, 1978 (Wet No. 98 van 1978), word hierby gewysig— 55

- (a) by the addition to the definition of “author” of the following paragraphs after paragraph (i):
- “(j) a derivative indigenous work, means the person who first made or created the work, a substantial part of which was derived from an indigenous work; and
 - (k) an indigenous work, means the indigenous community from which the work originated and acquired its traditional character;”;
- (b) by the substitution in subsection (1) for the definition of “collecting society” of the following definition:
- “**‘collecting society’** means a [collecting] society [established under] created by this Act, or agreement and which amongst others—
- (a) manages matters related to rights in copyright works;
 - (b) negotiates for, and collects royalties and benefits on behalf of its members; and
 - (c) distributes royalties and benefits to copyright owners;”;
- (c) by the insertion in subsection (1) after the definition of “collecting society” of the following definitions:
- “**‘Commission’** means the Commission established in terms of section 185 of the Companies Act, 2008 (Act No. 71 of 2008);
- ‘community protocol’** means a protocol developed by an indigenous community that describes the structure of the indigenous community and its claims to indigenous cultural expressions or knowledge and indigenous works, and provides procedures for prospective users of such indigenous cultural expressions or knowledge or indigenous works, to seek the community’s prior informed consent, negotiate mutually agreed terms and benefit-sharing agreements;”;
- (d) by the insertion in subsection (1) after the definition of “copyright” of the following definition:
- “**‘Council’** means the National Council for Indigenous Knowledge contemplated in section 28L;”;
- (e) by the insertion in subsection (1) after the definition of “country” of the following definitions:
- “**‘database’** means the National Database for Indigenous Knowledge contemplated in section 28C;
- ‘derivative indigenous work’** means any work forming the subject of this Act, applied to any form of indigenous work recognised by an indigenous community as having an indigenous or traditional origin, and a substantial part of which, was derived from indigenous cultural expressions or knowledge irrespective of whether such derivative indigenous work was derived before or after the commencement of the Intellectual Property Laws Amendment Act, 2013;”;
- (f) by the insertion in subsection (1) after the definition of “exclusive licence” of the following definitions:
- “**‘Fund’** means the National Trust Fund for Indigenous Knowledge established in terms of section 28I;
- ‘indigenous community’** means any recognisable community of people originated in or historically settled in a geographic area or areas located within the borders of the Republic, as such borders existed at the date of commencement of the Intellectual Property Laws Amendment Act, 2013, characterised by social, cultural and economic conditions which distinguish them from other sections of the national community, and who identify themselves and are recognised by other groups as a distinct collective;
- ‘indigenous cultural expressions or knowledge’** means any form, tangible or intangible, or a combination thereof, in which traditional culture and knowledge are embodied, passed on between generations, and tangible or intangible forms of creativity of indigenous communities, including, but not limited to—
- (a) phonetic or verbal expressions, such as stories, epics, legends, poetry, riddles and other narratives, words, signs, names or symbols;
 - (b) musical or sound expressions, such as songs, rhythms, or instrumental music, the sounds which are the expression of rituals;

- (a) deur in subartikel (1) na die omskrywing van “aanwending” die volgende omskrywing in te voeg:
“**‘afgeleide inheemse werk’** enige werk wat die onderwerp van hierdie Wet uitmaak, aangewend op enige vorm van inheemse werk erken deur ’n inheemse gemeenskap as van inheemse of tradisionele oorsprong, en waarvan ’n wesenlike deel afgelei is van inheemse kulturele uitdrukkings of kennis ongeag of sodanige afgeleide inheemse werk afgelei is voor of na die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013;”;
- (b) deur in subartikel (1) na die omskrywing van “bevoegde persoon” die volgende omskrywing in te voeg:
“**‘databasis’** die Nasionale Databasis vir Inheemse Kennis in artikel 28C beoog;”;
- (c) deur in subartikel (1) na die omskrywing van “dramatiese werk” die volgende omskrywing in te voeg:
“**‘Fonds’** die Nasionale Trustfonds vir Inheemse Kennis ingevolge artikel 28I ingestel;”;
- (d) deur in subartikel (1) na die omskrywing van “gebou” die volgende omskrywing in te voeg:
“**‘gemeenskapsprotokol’** ’n protokol deur ’n inheemse gemeenskap ontwikkel wat die struktuur van ’n inheemse gemeenskap en sy aansprake op inheemse kulturele uitdrukkings of kennis en inheemse werke beskryf, en wat voorsiening maak vir prosedures vir voornemende gebruikers van sodanige inheemse kulturele uitdrukkings of kennis of inheemse werke om die gemeenskap se vooraf-ingeligte instemming te kry, en om onderling ooreengekome terme en voordeeldelingsooreenkomste te beding;”;
- (e) deur in subartikel (1) na die omskrywing van “hierdie Wet” die volgende omskrywings in te voeg:
“**‘inheemse gemeenskap’** enige herkenbare gemeenskap van mense van oorsprong uit of histories gevestig in ’n geografiese area of areas binne die grense van die Republiek soos sodanige grense op die datum van inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, bestaan, gekenmerk deur sosiale, kulturele en ekonomiese omstandighede wat hulle onderskei van ander afdelings van die nasionale gemeenskap, wat hulself identifiseer as, en deur ander groepe erken word as, ’n afsonderlike kollektief;
‘inheemse kulturele uitdrukkings of kennis’ enige vorm, tasbaar of ontasbaar of ’n kombinasie daarvan, waarin tradisionele kultuur en kennis beliggaam is, oorgelewer tussen geslagte, en tasbare of ontasbare vorms van kreatiwiteit van inheemse gemeenskappe, met inbegrip van, maar nie beperk nie tot—
(a) fonetiese of mondelinge uitdrukkings, soos stories, heldedigte, legendes, poësie, raaisels en ander vertellings, woorde, tekens, name of simbole;
(b) musiek- of klankuitdrukkings, soos liederes, ritmes of instrumentele musiek, waarvan die klanke die uitdrukking van rituele is; en
(c) uitdrukkings deur aksie, soos danse, konserte, seremonies, rituele, uitdrukkings van spiritualiteit of geloof, sport, tradisionele spele, poppekaste, en ander uitvoerings, hetsy vasgelê of nie vasgelê nie; en
(d) tasbare uitdrukkings, soos wesenlike uitdrukkings van kuns, kunsvlyt, argitektuur, of tasbare spirituele vorms, of uitdrukkings van heilige plekke;
‘inheemse werk’ ’n letterkundige, artistieke of musiekwerk met ’n inheemse of tradisionele oorsprong, ook inheemse kulturele uitdrukkings of kennis wat geskep is deur persone wat lede, tans of histories, van ’n inheemse gemeenskap is of was en welke letterkundige, artistieke of musiekwerk as deel van die kulturele erfenis van sodanige inheemse gemeenskap beskou word;”;

- (c) expressions by action, such as dances, plays, ceremonies, rituals, expressions of spirituality or religion, sports, traditional games, puppet performances, and other performances, whether fixed or unfixed; or
- (d) tangible expressions, such as material expressions of art, handicrafts, architecture, or tangible spiritual forms, or expressions of sacred places; 5
- ‘indigenous work’** means a literary, artistic or musical work with an indigenous or traditional origin, including indigenous cultural expressions or knowledge which was created by persons who are or were members, currently or historically, of an indigenous community and which literary, artistic or musical work is regarded as part of the heritage of such indigenous community;” 10
- (g) by the substitution in subsection (1) for paragraph (a) of the definition of “infringing copy” of the following paragraph: 15
 - “(a) a literary, musical or artistic work or a published edition or a traditional work, means a copy thereof;”;
- (h) by the insertion after the definition of “musical work” of the following definition: 20
 - “**‘National Trust’** means the National Trust for Indigenous Knowledge established by section 28I;”;
- (i) by the substitution in subsection (1) for paragraphs (a) and (b) of the definition of “reproduction” of the following paragraphs respectively: 25
 - “(a) a literary or musical work or a broadcast or a traditional work, includes a reproduction in the form of a record or a cinematograph film; 25
 - (b) an artistic work or a traditional work, includes a version produced by converting the work into a three-dimensional form or, if it is three-dimensions, by converting it into a two-dimensional form; and”; 30
- (j) by the addition in subsection (1) after the definition of “this Act” of the following definition: 30
 - “**‘traditional work’** includes a derivative indigenous work and an indigenous work;”;
- (k) by the substitution in subsection (1) for the definition of “work” of the following definition: 35
 - “**‘work’** means— 40
 - (a) a work as contemplated in section 2; and
 - (b) for purposes of this Act, a traditional work and indigenous cultural expressions or knowledge as contemplated in this Act;”.

Insertion of Chapter 2A in Act 98 of 1978

4. The following chapter is hereby inserted in the Copyright Act, 1978 (Act No. 98 of 1978), after section 28:

“CHAPTER 2A

COPYRIGHT IN TRADITIONAL WORKS 45

“Application to traditional works

28A. (1) Subject to the provisions of this chapter, the provisions of this Act shall, except in so far as is otherwise provided in the said chapter, and in so far as they can be applied, apply to traditional works.

- (f) deur in subartikel (1) die omskrywing van “insamelingsvereniging” deur die volgende omskrywing te vervang:
“**‘insamelingsvereniging’** ’n [**insamelingsvereniging kragtens**] vereniging deur hierdie Wet [ingestel], of ooreenkoms geskep en wat onder andere—
(a) sake betreffende regte in outeursregwerke bestuur;
(b) tantième en voordele namens sy lede onderhandel en insamel; en
(c) tantième en voordele aan outeursregeienaars versprei;”;
- (g) deur in subartikel (1) na die omskrywing van “klankopname” die volgende omskrywing in te voeg:
“**‘Kommissie’** die Kommissie ingestel ingevolge artikel 185 van die Maatskappywet, 2008 (Wet No. 71 van 2008);”;
- (h) deur in subartikel (1) na die omskrywing van “musiekwerk” die volgende omskrywing in te voeg:
“**‘Nasionale Trust’** beteken die Nasionale Trust vir Inheemse Kennis deur artikel 28I ingestel;”;
- (i) deur in die omskrywing van “outeur” die volgende paragraawe na paragraaf (i) in te voeg:
(j) ’n afgeleide inheemse werk, die persoon wat die werk eerste gemaak of geskep het, waarvan ’n wesenlike deel van ’n inheemse werk afgelei is; en
(k) ’n inheemse werk, die inheemse gemeenskap waaruit die werk van oorsprong is en sy tradisionele karakter gekry het;”;
- (j) deur in subartikel (1) na die omskrywing van “programdraende-sein” die volgende omskrywing in te voeg:
“**‘Raad’** die Nasionale Raad vir Inheemse Kennis in artikel 28L beoog;”;
- (k) deur in subartikel (1) paragraawe (a) en (b) van die omskrywing van “reproduksie” deur onderskeidelik die volgende paragraawe te vervang:
“(a) ’n letterkundige of musiekwerk of ’n uitsending of ’n tradisionele werk, ook ’n reproduksie in die vorm van ’n opname of ’n rolprent;
(b) ’n artistieke werk of ’n tradisionele werk, ook ’n weergawe voortgebring deur die werk in driedimensionele vorm of, indien dit in drie dimensies is, in tweedimensionele vorm te omskep;”;
- (l) deur in subartikel (1) paragraaf (a) van die omskrywing van “skendende kopie” deur die volgende paragraaf te vervang:
“(a) ’n letterkundige, musiek- of kunswerk of ’n gepubliseerde uitgawe of ’n tradisionele werk, ’n kopie daarvan;”;
- (m) deur in artikel (1) na die omskrywing van “toekomstige eienaar” die volgende omskrywings in te voeg:
“**‘tradisionele werk’** ook afgeleide inheemse werk en ’n oorgeërfde inheemse werk;”;
- (n) deur in subartikel (1) die omskrywing van “werk” deur die volgende omskrywing te vervang:
“**‘werk’—**
(a) ’n werk soos beoog in artikel 2; en
(b) by die toepassing van hierdie Wet, ’n tradisionele werk en inheemse kulturele uitdrukkings of kennis soos beoog in hierdie Wet;”.

Invoeging van Hoofstuk 2A in Wet 98 van 1978

4. Die volgende hoofstuk en artikels word hierby in die Wet op Outeursreg, 1978 (Wet No. 98 van 1978), na artikel 28 ingevoeg:

“HOOFSTUK 2A

OUTEURSREG IN TRADISIONELE WERKE

Toepassing op tradisionele werke

28A. (1) Behoudens die bepalings van hoofstuk 2A, is die bepalings van hierdie Wet, behalwe vir sover dit anders bepaal word in die genoemde hoofstuk, en vir sover dit toegepas kan word, van toepassing op tradisionele werke.

(2) Nothing in this chapter shall be construed as conferring any rights on any person in respect of intellectual property which is not a traditional work.

Traditional works eligible for copyright

28B. (1) Subject to the provisions of this Act, traditional works shall be eligible for copyright. 5

(2) Notwithstanding section 2(2), a traditional work shall not be eligible for copyright unless it has been written down, recorded, represented in digital data or signals, or otherwise reduced to a material form or is capable of substantiation from the collective memory of the relevant indigenous community. 10

(3) Copyright shall be conferred on a traditional work only if—
(a) the traditional work is a derivative indigenous work and was created on or after the date of commencement of the Intellectual Property Laws Amendment Act, 2013, and the indigenous community from which the work, or a substantial part thereof originated, is or was an indigenous community when the work was created; or 15
(b) the traditional work is an indigenous work.

(4) No right in a derivative indigenous work provided for in the Intellectual Property Laws Amendment Act, 2013, shall be eligible for registration unless— 20

(a) prior informed consent has been obtained from the relevant authority or indigenous community;
(b) disclosure of the indigenous cultural expressions or knowledge have been made to the Commission; and 25
(c) a benefit-sharing agreement between the applicant and the relevant authority or indigenous community has been concluded.

(5) If an indigenous community has established a community protocol, the interaction with the indigenous community contemplated in subsection (4) must take such community protocol into account. 30

National Database

28C. (1) There shall be kept in the prescribed manner, at the offices of the registrars of patents, copyright, trade marks and designs, databases for indigenous knowledge as part of existing intellectual property registers, where applicable. 35

(2) The databases contemplated in subsection (1) shall form subsections of existing intellectual property registers and shall incorporate separate sections for the recording of information on different manifestations of indigenous cultural expressions or knowledge, as contemplated in subsection (3). 40

(3) All information submitted to the registrar regarding manifestations of indigenous cultural expressions or knowledge shall be recorded in the databases in the appropriate sections in the prescribed manner.

(4) Registration in respect of a traditional work shall be for the purposes of recordal of ownership and identification of representation within an indigenous community. 45

(5) The databases may be kept in an electronic format, and shall be open for inspection by the public during office hours, upon payment of the prescribed fee.

(6) The registrars of patents, copyright, trade marks and designs may request any relevant person to provide them with such information or advice as they may require in order to assess a request for recording as contemplated in subsection (7), or to maintain the databases. 50

(7) Any—
(a) person who is an author; 55
(b) person authorised to act on behalf of an author; or
(c) person appointed by the Minister in the manner prescribed, to act on behalf of an indigenous community which is no longer in existence,

(2) Niks in hierdie hoofstuk word uitgelê dat dit enige regte verleen aan 'n persoon ten opsigte van intellektuele eiendom wat nie 'n tradisionele werk is nie.

Tradisionele werke geskik vir outeursreg

28B. (1) Behoudens die bepalings van hierdie Wet, kom tradisionele werke in aanmerking vir outeursreg. 5

(2) Ondanks artikel 2(2), kom 'n tradisionele werk nie vir outeursreg in aanmerking nie tensy die werk op skrif gestel is, opgeneem is, in digitale data of seine verteenwoordig is, of andersins tot stoflike vorm herlei is of vanuit die kollektiewe geheue van die betrokke inheemse gemeenskap gestaaf kan word. 10

(3) Outeursreg word slegs aan 'n tradisionele werk verleen indien—
(a) die tradisionele werk 'n afgeleide inheemse werk is en geskep is op of na die datum van inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, en die inheemse gemeenskap waaruit die werk of 'n wesenlike deel daarvan van oorsprong is 'n inheemse gemeenskap is of was toe die werk geskep is; of 15
(b) die tradisionele werk 'n inheemse werk is.

(4) Geen reg in 'n afgeleide inheemse werk waarvoor in die Wysigingswet op Intellektuele Eiendomsreg, 2013, voorsiening gemaak is, kom in aanmerking vir registrasie nie, tensy— 20

(a) vooraf-ingeligte instemming verkry is van die betrokke gesag of inheemse gemeenskap;
(b) die inheemse kulturele uitdrukkings of kennis aan die Kommissie openbaar gemaak is; en 25
(c) die aansoeker en die betrokke gesag of inheemse gemeenskap 'n voordeeldelingsooreenkoms aangegaan het.

(5) Indien 'n inheemse gemeenskap 'n gemeenskapsprotokol ingestel het, moet die interaksie met die inheemse gemeenskap in subartikel (4) beoog, sodanige gemeenskapsprotokol in ag neem. 30

Nasionale Databasis

28C. (1) Databasisse vir inheemse kennis moet op die voorgeskrewe wyse as deel van bestaande intellektuele eiendomsregisters by die kantore van die registrateurs van patente, outeursreg, handelsmerke en modelle, waar van toepassing, gehou word. 35

(2) Die databasisse in subartikel (1) beoog maak onderafdelings uit van bestaande intellektuele eiendomsregisters en moet aparte afdelings insluit vir die opteken van inligting oor verskillende manifestasies van inheemse kulturele uitdrukkings of kennis soos beoog in subartikel (3). 40

(3) Alle inligting aan die registrateur voorgelê in verband met manifestasies van inheemse kulturele uitdrukkings of kennis, moet op die voorgeskrewe wyse in gepaste afdelings in die databasisse opgeteken word.

(4) Registrasie ten opsigte van 'n tradisionele werk is vir die doeleindes van boekstaving van eienaarskap en identifikasie van verteenwoordiging binne 'n inheemse gemeenskap. 45

(5) Die databasisse kan in 'n elektroniese formaat gehou word, en moet oop wees vir inspeksie deur die publiek tydens kantoorure by betaling van die voorgeskrewe geld.

(6) Die registrateurs van patente, outeursreg, handelsmerke en modelle kan versoek dat 'n betrokke persoon hulle voorsien van sodanige inligting of raad wat hulle mag benodig ten einde 'n versoek om aantekening soos in subartikel (7) beoog te oorweeg of om die databasisse te onderhou. 50

(7) Enige—
(a) persoon wat 'n outeur is;
(b) persoon gemagtig om namens 'n outeur op te tree; of 55
(c) persoon op die voorgeskrewe wyse aangestel deur die Minister om namens 'n inheemse gemeenskap op te tree wat nie meer bestaan nie,

may, for the purposes of recordal, submit to the registrars of patents, copyright, trade marks and designs a request together with the appropriate information as prescribed, for a manifestation of indigenous cultural expressions or knowledge to be recorded in the relevant database.

(8) If the applicant for registration is an existing indigenous community, the request referred to in subsection (7) shall include a community protocol setting out relevant information about the indigenous community including—

- (a) identification of the indigenous community and its acknowledged structure;
- (b) full details of the appointed representative of the indigenous community in whose name the copyright must be registered;
- (c) if the representative is a juristic person, full details of registration of such juristic person;
- (d) the indigenous work that is being recorded and the justification for the indigenous community claiming rights to it;
- (e) whether such indigenous work is sacred, or should for any other reason, which must be provided, be kept confidential; and
- (f) a written undertaking by the representative of the indigenous community to the effect that he or she will hold the copyright on behalf of the indigenous community.

(9) The Council shall assist the indigenous community to ensure that the community protocol corresponds with the structure of the indigenous community.

(10) The community protocol must be kept with the recordal of the indigenous work.

(11) If the registrars of patents, copyright, trade marks and designs are satisfied that a request for recording meets with the prescribed requirements for recording, he or she shall accept the request and, within the prescribed period, cause the request to be published in the prescribed manner.

(12) Any person may, within three months from the date of publication of the request contemplated in subsection (11), or such further period as the registrars of patents, copyright, trade marks and designs may upon application allow, oppose the recording by lodging with the registrars of patents, copyright, trade marks and designs a notice of opposition setting out the grounds on which he or she relies to support the opposition.

(13) An opposition contemplated in subsection (12) shall be dealt with in the manner prescribed, and at the conclusion thereof the registrars of patents, copyright, trade marks and designs shall decide either to—

- (a) refuse the recording of the information concerned;
- (b) record the information; or
- (c) record the information subject to certain conditions.

(14) A recording as contemplated in this section shall serve as *prima facie* proof of the existence of the manifestation of indigenous cultural expressions or knowledge and the veracity of the information recorded, but shall not give rise to any rights other than expressly provided in this Act or in the Performers' Protection Act, 1967 (Act No. 11 of 1967), the Trade Marks Act, 1993 (Act No. 194 of 1993), or the Designs Act, 1993 (Act No. 195 of 1993).

(15) The Commission may determine which information recorded in the databases must be treated confidentially: Provided that if the community protocol indicates that the information is sacred or must be kept in confidence, the Commission must treat the information confidentially.

(16) Any person contemplated in subsection (7), or a third party who has an interest in a traditional work may submit to the registrars of patents, copyright, trade marks and designs a request together with the appropriate information as prescribed, for the amendment or removal of a traditional work in the database.

kan, vir die doeleindes van boekstaving, 'n versoek voorlê vergesel van die gepaste inligting soos voorgeskryf, dat 'n manifestasie van inheemse kulturele uitdrukkings of kennis in die toepaslike databasis opgeteken word, aan die registrateurs van patente, outeursreg, handelsmerke en modelle.

(8) Indien die aansoeker om registrasie 'n bestaande inheemse gemeenskap is, moet die versoek in subartikel (7) bedoel 'n gemeenskapsprotokol insluit wat toepaslike inligting uiteensit oor die inheemse gemeenskap, met inbegrip van—

- (a) identifikasie van die inheemse gemeenskap en sy erkende struktuur;
- (b) volle besonderhede van die aangestelde verteenwoordiger van die inheemse gemeenskap in wie se naam die outeursreg geregistreer moet word;
- (c) indien die verteenwoordiger 'n regspersoon is, volle besonderhede van registrasie van sodanige regspersoon;
- (d) die inheemse werk wat opgeteken word en die regverdiging van die gemeenskap se aanspraak op regte daarop;
- (e) of sodanige inheemse werk gewyd is, of om enige ander rede, wat voorgelê moet word, vertroulik gehou moet word; en
- (f) 'n geskrewe onderneming deur die verteenwoordiger van die inheemse gemeenskap dat hy of sy die outeursreg namens die inheemse gemeenskap sal hou.

(9) Die Raad moet die inheemse gemeenskap bystaan om te verseker dat die gemeenskapsprotokol ooreenstem met die struktuur van die inheemse gemeenskap.

(10) Die gemeenskapsprotokol moet saam met die boekstaving van die inheemse werk gehou word.

(11) Indien die registrateurs van patente, outeursreg, handelsmerke en modelle tevrede is dat 'n versoek om aantekening aan die voorgeskrewe vereistes vir aantekening voldoen, moet hy of sy die versoek aanvaar, en die versoek in die voorgeskrewe tydperk op die voorgeskrewe wyse laat publiseer.

(12) 'n Persoon kan, binne drie maande vanaf die datum van publikasie van die versoek in subartikel (11) beoog, of sodanige verdere tydperk soos wat die registrateurs van patente, outeursreg, handelsmerke en modelle by aansoek kan toelaat, die optekening teenstaan deur 'n kennisgewing van verset by die registrateurs van patente, outeursreg, handelsmerke en modelle in te dien waarin die gronde waarop hy of sy staatmaak om die verset te ondersteun, uiteengesit word, in te dien wat sy of haar gronde vir die verset uiteensit.

(13) 'n Verset in subartikel (12) beoog sal op die voorgeskrewe wyse hanteer word, en met die afhandeling daarvan moet die registrateurs van patente, outeursreg, handelsmerke en modelle besluit om—

- (a) die aantekening van die betrokke inligting te weier;
- (b) die inligting aan te teken; of
- (c) die inligting op te teken behoudens sekere voorwaardes.

(14) 'n Optekening in hierdie artikel beoog dien as *prima facie* bewys van die bestaan van die manifestasie van inheemse kulturele uitdrukkings of kennis en die juistheid van die aangetekende inligting, maar gee nie aanleiding tot enige regte behalwe uitdruklik bepaal in hierdie Wet of in die Wet op die Beskerming van Voordraers, 1967 (Wet No. 11 van 1967), die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), of die Wet op Modelle, 1993 (Wet No. 195 van 1993), nie.

(15) Die Kommissie kan bepaal watter inligting wat in die databasisse aangeteken is, as vertroulik hanteer moet word: Met dien verstande dat indien die gemeenskapsprotokol aandui dat die inligting gewyd is of vertroulik gehou moet word, die Kommissie die inligting vertroulik moet hanteer.

(16) 'n Persoon in subartikel (7) beoog, of 'n derde party wat 'n belang in 'n tradisionele werk het, kan 'n versoek tesame met die gepaste inligting soos voorgeskryf by die registrateurs van patente, outeursreg, handelsmerke en modelle indien om 'n tradisionele werk in die databasis te laat wysig of te verwyder.

- (17) Upon receipt of a request to amend or remove any indigenous cultural expressions or knowledge recorded in a database, the registrars of patents, copyright, trade marks and designs shall—
- (a) where the request did not originate from the owner or proprietor of the indigenous cultural expressions or knowledge—
 - (i) notify said owner or proprietor of the request;
 - (ii) require a written response from said owner or proprietor to be submitted to the registrars of patents, copyright, trade marks and designs within a stipulated time frame;
 - (iii) upon receipt of the written response from the said owner or proprietor, refer the matter for dispute resolution as set out in section 28K; and
 - (iv) implement the decision of the dispute resolution institution referred to in section 28K; or
 - (b) where the request originated from the owner or proprietor of the indigenous cultural expressions or knowledge—
 - (i) consider the request as set out in subsection (16); and
 - (ii) consider any opposition received as set out in subsection (12).
- (18) The Minister may, in consultation with the Minister of Finance, prescribe the tariff of fees payable for access by any person to the databases.

Ownership of copyright

- 28D.** (1) For the purposes of this Act, an indigenous community is deemed to be a juristic person.
- (2) Subject to the provisions of this section as well as section 21, the ownership of any copyright conferred by sections 3 and 28B on any traditional work shall vest in the author.
- (3) The ownership of any copyright conferred by sections 3 and 28B, shall vest in the National Trust established by section 28I, to be administered for the benefit of the relevant indigenous communities, in the manner prescribed in section 28I, if—
- (a) the author cannot be determined;
 - (b) the author is an indigenous community which is no longer in existence; or
 - (c) the authorship cannot be shared between more than one indigenous community claiming authorship, for whatever reason.

Nature of copyright in traditional works

- 28E.** (1) Copyright in a traditional work vests the exclusive right to do or to authorise the doing of any of the following acts in the Republic:
- (a) Reproducing the traditional work in any manner or form;
 - (b) reproducing the cinematograph film in which the traditional work is included in any manner or form, including making a still photograph thereof;
 - (c) publishing the traditional work if it was hitherto unpublished;
 - (d) in the case of a traditional work of a literary or musical nature, performing the traditional work in public and broadcasting the work or causing a communication to the public of the work, by wire or wireless means, including the making available to the public of the work in such a way that members of the public may access the work from a place and at a time individually chosen by them;
 - (e) in the case of a traditional work of a musical or artistic nature, or a traditional work of a literary nature in the form of a dramatic work, to include the traditional work in a cinematograph film, television broadcast or a sound recording;
 - (f) broadcasting the traditional work, or the cinematograph film or sound recording in which the traditional work is included;
 - (g) causing the cinematograph film in which the traditional work is included, in so far as it consists of images, to be seen in public, or, in

- (17) By ontvangs van 'n versoek om enige inheemse kulturele uitdrukkings of kennis in 'n databasis aangeteken te wysig of te verwyder, moet die registrateurs van patente, outeursreg, handelsmerke en modelle—
- (a) waar die versoek nie van die eienaar van die inheemse kulturele uitdrukkings of kennis gekom het nie—
 - (i) die genoemde eienaar inlig van die versoek;
 - (ii) vereis dat 'n geskrewe antwoord van die genoemde eienaar binne 'n bepaalde tydperk aan die registrateurs van patente, outeursreg, handelsmerke en ontwerpe voorgelê word;
 - (iii) by ontvangs van die geskrewe antwoord van die genoemde eienaar, die aangeleentheid verwys vir geskilbeslegting soos in artikel 28K uiteengesit; en
 - (iv) die besluit van die geskilbeslegtingsinstelling in artikel 28K bedoel, toepas;
 - (b) waar die versoek van die eienaar van inheemse kulturele uitdrukkings of kennis gekom het—
 - (i) die versoek oorweeg soos in subartikel (12) uiteengesit; en
 - (ii) enige verset soos in subartikel (13) uiteengesit, oorweeg.
- (18) Die Minister kan, in oorleg met die Minister van Finansies, die tarief van gelde voorskryf wat betaalbaar is vir toegang deur enige persoon tot die databasisse.

Eienaarskap van outeursreg

- 28D.** (1) By die toepassing van hierdie Wet word 'n inheemse gemeenskap geag 'n regs persoon te wees.
- (2) Behoudens die bepalinge van hierdie artikel asook artikel 21, vestig die eienaarskap van enige outeursreg deur artikels 3 en 28B aan enige tradisionele werk verleen, in die outeur.
- (3) Die eienaarskap van enige outeursreg wat deur artikels 3 en 28B verleen is, vestig in die Nasionale Trust wat deur artikel 28I ingestel is om tot voordeel van alle betrokke inheemse gemeenskappe, soos voorgeskryf in artikel 28I, geadministreer te word indien—
- (a) daar nie vasgestel kan word wie die outeur is nie;
 - (b) die outeur 'n inheemse gemeenskap is wat nie meer bestaan nie; of
 - (c) die outeurskap nie, om watter rede ook al, tussen meer as een inheemse gemeenskap gedeel kan word nie.

Aard van kopiereg in tradisionele werke

- 28E.** (1) Outeursreg in 'n tradisionele werk verleen die uitsluitlike reg om enige van die volgende handeling in die Republiek te verrig of die verrigting daarvan te magtig:
- (a) Reproduksie van die tradisionele werk op enige wyse of in enige vorm;
 - (b) reproduksie van die rolprent waarin die tradisionele werk ingesluit is op enige wyse of in enige vorm, ook om 'n stilfoto daarvan te maak;
 - (c) publikasie van die tradisionele werk indien dit tot nog toe ongepubliseer was;
 - (d) in die geval van 'n tradisionele werk van 'n letterkundige of musikale aard, uitvoering van die tradisionele werk in die openbaar en uitsaai van die werk, of om die werk aan die publiek te laat oordra, per draad of draadlose wyse, ook om die werk aan die publiek beskikbaar te stel op so 'n wyse dat lede van die publiek op 'n tyd en plek wat hulle self kies toegang tot die werk kan verkry;
 - (e) in die geval van 'n tradisionele werk van 'n musikale of kunstige aard, of 'n tradisionele werk van 'n letterkundige aard in die vorm van 'n dramatiese werk, om die tradisionele werk in 'n rolprent, televisie-uitsending of 'n klankopname in te sluit;
 - (f) uitsaai van die tradisionele werk, die rolprent of klankopname waarin die tradisionele werk ingesluit is;
 - (g) die rolprent waarin die tradisionele werk ingesluit is, vir sover dit uit beelde bestaan, in die openbaar te laat sien, of, vir sover dit uit klanke

- so far as it consists of sounds, to be heard in public, or causing a communication to the public of the said cinematograph film, by wire or wireless means, including the making available to the public of the said cinematograph film in such a way that members of the public may access the said cinematograph film from a place and at a time individually chosen by them; 5
- (h) communicating the sound recording in which the traditional work is included to the public;
- (i) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the cinematograph film or a reproduction of the sound recording in which the traditional work is included; 10
- (j) causing the traditional work, or a television or other programme which incorporates the traditional work, to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast including the traditional work and is operated by the original broadcaster; 15
- (k) making, directly or indirectly, a record embodying the sound recording in which the traditional work is included;
- (l) making an adaptation of the traditional work; and
- (m) doing in relation to an adaptation of the traditional work, any of the acts specified in paragraphs (a) to (l). 20
- (2) The exclusive right vested under subsection (1) shall be exercised subject to any rights in respect of the traditional work acquired by any person prior to the commencement of the Intellectual Property Laws Amendment Act, 2013. 25

Term of protection

- 28F.** (1) The term of copyright conferred on traditional works by this Act shall be, in the case of—
- (a) a derivative indigenous work referred to in section 28B(3)(a), 50 years from the end of the year in which— 30
- (i) the work was first communicated to the public with the consent of the author or authors; or
- (ii) the date of the death of the author or all authors concerned, whichever term expires last; and
- (b) an indigenous work referred to in section 28B(3)(b), in perpetuity. 35
- (2) Notwithstanding section 5, copyright in an indigenous work that vests in the State as a result of the provisions of this Act shall be perpetual in nature.

General exceptions regarding protection of traditional works

- 28G.** (1) Sections 12 to 19B shall, with the necessary changes required by the context, apply to a traditional work, in so far as they can be applied to the specific traditional work. 40
- (2) The copyright in a traditional work shall not be infringed by a person if that person—
- (a) has acquired rights in respect of that work by doing any of the acts referred to in section 28E prior to the commencement of the Intellectual Property Laws Amendment Act, 2013; and 45
- (b) continues to perform such act, and save for the obligations contemplated in subsections (3) and (5), such person shall continue to hold his or her copyright in the manner he or she has done prior to the commencement of the Intellectual Property Laws Amendment Act, 2013. 50
- (3) Any person who has acquired rights as contemplated in subsection (2), must comply with section 28B(4)(b) and (c), within 12 months after the commencement of the Intellectual Property Laws Amendment Act, 2013: 55
- Provided that the rights of the indigenous community to royalties or benefits or both such royalties and benefits shall come into existence on the commencement of the Intellectual Property Laws Amendment Act, 2013.

- bestaan, in die openbaar te laat hoor, of die genoemde rolprent aan die publiek te laat oordra, per draad of draadlose middele, ook om die genoemde rolprent op so 'n wyse beskikbaar te stel dat lede van die publiek op 'n plek en tyd van hul individuele keuse toegang tot die genoemde rolprent kan kry; 5
- (h) die klankopname waarin die tradisionele werk ingesluit is aan die publiek oor te dra;
- (i) 'n kopie van die rolprent of 'n reproduksie van die klankopname waarin die tradisionele werk ingesluit is verhuur, of aanbied of uitstal vir verhuring by wyse van handel, regstreeks of onregstreeks; 10
- (j) die tradisionele werk, of 'n televisie of ander program wat die tradisionele werk inkorporeer, laat oorsend in 'n verspreidingsdiens, tensy sodanige diens 'n wettige televisie-uitsending oorsend, wat van die tradisionele werk insluit en deur die oorspronklike uitsender bedryf word; 15
- (k) 'n televisie of ander program vervaardig, regstreeks of onregstreeks, waarin die klankopname vervat is waarin die tradisionele werk ingesluit is;
- (l) 'n aanwending van die tradisionele werk vervaardig; en
- (m) in verband met 'n aanwending van die tradisionele werk, enige van die handelinge in paragrawe (a) tot en met (l) vermeld, verrig. 20
- (2) Die eksklusiewe reg kragtens subartikel (1) gevestig, word uitgeoefen behoudens enige regte ten opsigte van die tradisionele werk wat 'n persoon verkry het voor die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013. 25

Termyn van beskerming

28F. (1) Die termyn van outeursreg wat deur hierdie Wet aan tradisionele werke verleen word, is in die geval van—

- (a) 'n afgeleide inheemse werk in artikel 28B(3)(a) bedoel, 50 jaar vanaf die einde van die jaar waarin— 30
- (i) die werk die eerste keer met die instemming van die outeurs aan die publiek oorgedra is; of
- (ii) die datum van die dood van die outeur of alle betrokke outeurs, welke termyn ook al laaste verstryk; en
- (b) 'n tradisionele werk in artikel 28B(3)(b) bedoel, onbepaald. 35
- (2) Ondanks artikel 5, is outeursreg in 'n inheemse werk wat in die Staat vestig as gevolg van die bepalings van hierdie Wet, onbepaald van aard.

Algemene uitsonderings betreffende beskerming van tradisionele werke

28G. (1) Artikels 12 tot 19B is, met die nodige veranderinge deur die samehang vereis, van toepassing op inheemse werke, vir sover dit op die bepaalde inheemse werk toegepas kan word. 40

(2) Die outeursreg in 'n tradisionele werk word nie geskend deur 'n persoon nie indien daardie persoon—

- (a) regte bekom het ten opsigte van daardie werk deur enige van die handelinge in artikel 28E bedoel te verrig voor die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013; en 45
- (b) voortgaan om sodanige handeling te verrig, en buiten vir die verpligtinge in subartikels (3) en (5) beoog, behou sodanige persoon sy of haar outeursreg soos voor die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013. 50

(3) 'n Persoon wat regte soos in subartikel (2) beoog verkry het voor hierdie Wet in werking getree het, moet binne 12 maande na die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2011, aan artikel 28B(4)(b) en (c) voldoen: Met dien verstande dat die regte van die inheemse gemeenskap op tantième of voordele of beide sodanige tantième en voordele begin bestaan by die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013. 55

(4) Any person who intends to acquire rights pertaining to doing any of the acts referred to in section 28E in respect of an indigenous work after the commencement of the Intellectual Property Laws Amendment Act, 2013, must comply with section 28B(4).

(5) If any commercial benefit is derived from acts contemplated in subsections (2) or (4) the person who derived such benefit shall pay a royalty, or a benefit, or both such royalty and benefit, to the author as set out in section 28H(3).

(6) Any person deriving commercial benefit from the use of a traditional work, the value of which is less than the prescribed value shall be excluded from the requirements of sections 28B(4), 28C and 28H.

(7) A traditional work may be used without obtaining prior consent of the copyright owner, if it is for the purpose of—

- (a) private study or private use;
- (b) professional criticism or review;
- (c) reporting on current events;
- (d) education;
- (e) scientific research;
- (f) legal proceedings; or
- (g) the making of recordings and other reproductions of indigenous cultural expressions or knowledge for purposes of their inclusion in an archive, inventory, dissemination for non-commercial cultural heritage safeguarding purposes and incidental uses:

Provided that only such excerpts or portions as is reasonably required are used and that the copyright owner's name is acknowledged.

Royalties and benefits

28H. (1) The content of sections 6, 7, 8 and 9 shall with the necessary changes required by the context, apply to traditional works, in so far as they can be applied to the specific traditional work.

(2) In the absence of an agreement to the contrary, no person may—

- (a) broadcast, cause the transmission of or play a sound recording as contemplated in section 9(c), (d) or (e); or
- (b) show, broadcast or cause the transmission of a cinematograph film recording a traditional work, or include a traditional work in a cinematograph film or a television broadcast as contemplated in section 28E(1),

without payment of a royalty, a benefit, or both such royalty and benefit, to the owner of the relevant copyright.

(3) The amount of any royalty, benefit, or both such royalty and benefit due for the use of traditional work shall be determined by —

- (a) an agreement between the user of the traditional work and the owner of the copyright in such work, or between their representative collecting societies; or
- (b) in the absence of an agreement as contemplated in subsection (a) being reached, the amount or value of the royalty, benefit, or both such royalty and benefit, shall be determined by—
 - (i) an institution accredited by the Commission as contemplated in section 28K(1);
 - (ii) the Copyright Tribunal referred to in section 29(1); or
 - (iii) arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965);

Provided that if the persons referred to in paragraph (a) cannot agree on which referral to follow in terms of this subsection within a reasonable period, any of the persons may refer these disputes for resolution in terms of section 28K.

(4) Agreements concluded in terms of sections 28G(3), 28G(4) and subsection (3)(a) must be submitted to the Council, who shall—

(4) 'n Persoon wat regte in verband met die verrigting van enige van die handelinge in artikel 28E van hierdie Wet bedoel wil verkry na die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, moet aan artikel 28B(4) voldoen.

(5) Indien enige kommersiële voordeel uit enige handeling in subartikels (2) of (4) beoog verkry word, moet die persoon wat sodanige voordeel getrek het 'n tantième, of 'n voordeel, of beide sodanige tantième en voordeel, aan die outeur soos in artikel 28H(3) uiteengesit, betaal.

(6) 'n Persoon wat kommersiële voordeel uit die gebruik van 'n tradisionele werk trek, welke waarde minder is as die voorgeskrewe waarde, word uitgesluit van die vereistes van artikels 28B(4), 28C en 28H.

(7) 'n Tradisionele werk kan gebruik word sonder om vooraf toestemming van die eienaar van die outeursregte verkry, indien dit is vir die doel van—

- (a) privaatstudie of private gebruik;
- (b) professionele kritiek of resensie;
- (c) verslagdoening oor sake van die dag;
- (d) onderwys;
- (e) wetenskaplike navorsing;
- (f) regsverrigtinge; of
- (g) die maak van opnames en ander reproduksies van inheemse kulturele uitdrukkings of kennis vir doeleindes van insluiting daarvan in 'n argief, inventaris, verspreiding vir niekommersiële kulturele erfenisbewaringsdoeleindes en insidentele gebruike:

Met dien verstande dat slegs die uittreksels of gedeelte wat redelikerwys nodig is gebruik word en dat die eienaar van die outeursreg se naam erken word.

Tantième en voordele

28H. (1) Die inhoud van artikels 6, 7, 8 en 9 is, met die nodige veranderinge deur die samehang vereis, van toepassing op tradisionele werke, vir sover dit op die bepaalde tradisionele werk toegepas kan word.

(2) By ontstentenis aan 'n ooreenkoms tot die teendeel, kan geen persoon—

- (a) 'n klankopname laat oorsend of speel soos in artikel (9)(c), (d) of (e) beoog; of
- (b) 'n rolprent vertoon, uitsaai of laat oordra wat 'n tradisionele werk opneem, of 'n tradisionele werk insluit in 'n rolprent of televisie-uitsending soos in artikel 28E(1) beoog,

sonder om 'n tantième, 'n voordeel, of beide sodanige tantième en voordeel, aan die eienaar van die betrokke outeursreg te betaal nie.

(3) Die bedrag van enige tantième, voordeel, of beide sodanige tantième en voordeel, betaalbaar vir die gebruik van tradisionele werke word bepaal deur—

- (a) 'n ooreenkoms tussen die gebruiker van die tradisionele werk en die eienaar van die outeursreg in sodanige werk, of tussen die verteenwoordigende insamelingsverenigings; of
- (b) by ontstentenis aan 'n ooreenkoms soos beoog in subartikel (a), die bedrag of waarde van die tantième, voordeel, of beide sodanige tantième en voordeel—
 - (i) 'n instelling wat deur die Kommissie geakkrediteer is soos beoog in artikel 28K(1);
 - (ii) die Outeursreghof in artikel 29(1) bedoel; of
 - (iii) arbitrasie ingevolge die Wet op Arbitrasie, 1965 (Wet No. 42 van 1965);

Met dien verstande dat indien die persone in subartikel (3)(a) bedoel nie kan ooreenkom oor watter verwysing om ingevolge hierdie subartikel binne 'n redelike tydperk te volg nie, enige van die persone daardie geskille kan verwys vir beregting ingevolge artikel 28K.

(4) Ooreenkomste ingevolge artikels 28G(3), 28G(4) en subartikel (3)(a) aangegaan moet aan die Raad voorgelê word en die Raad moet—

- (a) scrutinise the agreement for compliance with intellectual property laws, the community protocol and this Act; and
 - (b) where any clause within the contract is regarded as not being to the benefit of the indigenous community or member of the indigenous community concerned, require renegotiation of said clause and provide the necessary advice. 5
- (5) The owner of copyright in a derivative indigenous work shall pay a royalty, a benefit, or both such royalty and benefit, agreed to as set out in this section, to the owner of the copyright in the indigenous work from which the derivative indigenous work was derived. 10

National Trust and Fund for Indigenous Knowledge

- 28I.** (1) There is hereby established a National Trust to be known as the National Trust for Indigenous Knowledge, and the Minister shall appoint not more than five persons as trustees for the National Trust.
- (2) The National Trust shall be responsible for the promotion and preservation of indigenous cultural expressions and knowledge, including, but not limited to— 15
- (a) the commercialisation and exploitation of indigenous cultural expressions or knowledge for the purpose of generating income;
 - (b) facilitating the development of indigenous communities with respect to training on, and awareness of, their intellectual property and associated rights; and 20
 - (c) assisting indigenous communities in the application of this Act and other legislation dealing with indigenous cultural expressions or knowledge. 25
- (3) The National Trust shall establish a Fund to be known as the National Trust Fund for Indigenous Knowledge.
- (4) The trustees of the National Trust shall administer the Fund in the prescribed manner and may invest monies received from the commercialisation of indigenous cultural expressions or knowledge or otherwise, pending the distribution thereof— 30
- (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
 - (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984). 35
- (5) The Fund may be subdivided, in whole or in part, into separate sub-funds which may be administered on behalf of and at the request of the National Trust by the registrars of patents, copyright, trade marks and designs, respectively. 40
- (6) All income derived by the National Trust from the use of indigenous cultural expressions or knowledge, including all royalties and benefits payable as provided for in—
- (a) this Act;
 - (b) the Performers' Protection Act, 1967 (Act No. 11 of 1967); 45
 - (c) the Patents Act, 1978 (Act No. 57 of 1978);
 - (d) the Trade Marks Act, 1993 (Act No. 194 of 1993); and
 - (e) the Designs Act, 1993 (Act No. 195 of 1993),
- shall be National Trust monies and shall be paid into the respective sub-funds, to be applied for the benefit of indigenous communities: 50
- Provided that the Minister may prescribe—
- (i) administration fees;
 - (ii) fees relating to commercialisation, exploitation and training of indigenous communities;
 - (iii) the frequency and manner in which payments shall be made to indigenous communities; and 55
 - (iv) any other matter related to the administration of the income received by the Fund.
- (7) The Commission shall be responsible for the administration of the National Trust. 60

- (a) die ooreenkoms nagaan vir voldoening aan intellektuele eiendomsreg, die gemeenskapsprotokol en hierdie Wet; en
- (b) waar 'n klousule in die kontrak geag word nie tot voordeel van die betrokke inheemse gemeenskap of lid van die inheemse gemeenskap te wees nie, vereis dat die genoemde klousule heronderhandel word en die nodige advies voorsien. 5
- (5) Die eienaar van outeursreg in 'n afgeleide inheemse werk betaal 'n tantième, 'n voordeel, of beide sodanige tantième en voordeel, op ooreengekom soos in hierdie artikel uiteengesit, aan die eienaar van die outeursreg in die inheemse werk waarvan die afgeleide inheemse werk afgelei is. 10

Nasionale Trust en Fonds vir Inheemse Kennis

- 281.** (1) 'n Nasionale Trust word hierby ingestel wat bekend staan as die Nasionale Trust vir Inheemse Kennis, en die Minister stel hoogstens vyf persone as trustees vir die trust aan. 15
- (2) Die Nasionale Trust is verantwoordelik vir die bevordering en bewaring van inheemse kulturele uitdrukkings en kennis, met inbegrip van, maar nie beperk nie tot—
- (a) die kommersialisering en benutting van inheemse kulturele uitdrukkings of kennis ten einde inkomste te genereer; 20
 - (b) die fasilitering van die ontwikkeling van inheemse gemeenskappe ten opsigte van opleiding oor en bewustheid van hul intellektuele eiendom en gepaardgaande regte; en
 - (c) die bystaan van inheemse gemeenskappe in die toepassing van hierdie Wet en ander wetgewing wat oor inheemse kulturele uitdrukkings of kennis handel. 25
- (3) Die Nasionale Trust moet 'n Fonds instel wat as die Nasionale Trustfonds vir Inheemse Kennis bekend sal staan.
- (4) Die trustees van die Nasionale Trust administreer die Fonds op die voorgeskrewe wyse en kan gelde wat van die kommersialisering van inheemse kulturele uitdrukkings of kennis of andersins ontvang is, belê, hangende die verspreiding daarvan— 30
- (a) op 'n opvra of langtermyn vaste deposito by enige geregistreerde bank of finansiële instelling in die Republiek; of
 - (b) in 'n beleggingsrekening by die Korporasie vir Openbare Deposito's ingestel ingevolge artikel 2 van die Wet op die Korporasie vir Openbare Deposito's, 1984 (Wet No. 46 van 1984). 35
- (5) Die Fonds kan as 'n geheel of gedeeltelik onderverdeel word in 'n aparte subfonds wat namens en op versoek van die Nasionale Trust deur die registrateurs van onderskeidelik patente, outeursreg, handelsmerke en modelle geadministreer kan word. 40
- (6) Alle inkomste wat die Nasionale Trust verkry uit die gebruik van inheemse kulturele uitdrukkings of kennis, met inbegrip van alle tantième en voordele betaalbaar soos voorsien in—
- (a) hierdie Wet; 45
 - (b) die Wet op Beskerming van Voordraers, 1967 (Wet No. 11 van 1967);
 - (c) die Wet op Patente, 1978 (Wet No. 57 van 1978);
 - (d) die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993); en
 - (e) die Wet op Modelle, 1993 (Wet No. 195 van 1993),
- is die Nasionale Trust se gelde en word in die onderskeie subfondse inbetaal om tot voordeel van inheemse gemeenskappe gebruik te word: Met dien verstande dat die Minister voorskrifte kan uitreik oor— 50
- (i) administrasiegelde;
 - (ii) gelde ten opsigte van kommersialisering, benutting en opleiding van inheemse gemeenskappe; 55
 - (iii) die gereeldheid waarmee en die wyse waarop betalings aan inheemse gemeenskappe gedoen sal word; en
 - (iv) enige ander aangeleentheid betreffende die administrasie van die inkomste wat deur die Fonds ontvang is.
- (7) Die Kommissie is verantwoordelik vir die administrasie van die Nasionale Trust. 60

(8) Notwithstanding the provisions of this section, any indigenous community may establish a legal entity, business or other enterprise to promote or exploit indigenous cultural expressions or knowledge: Provided that any commercial benefit derived shall only be subject to royalties, benefits or licence fees once, which royalties, benefits or license fees may be paid to the Fund, if the Fund is the owner, by the indigenous community. 5

(9) Nothing in this Act, or in the Acts referred to in subsection (6) shall prohibit an indigenous community from requesting the National Trust to collect, manage and distribute royalties, benefits or license fees on its behalf against payment of a prescribed fee. 10

Assignment and licences

28J. (1) Save for—

(a) assignment of copyright to a collecting society; or
(b) the transfer to a duly appointed representative of the indigenous community, 15
the copyright in an indigenous work shall not be transmissible by assignment, testamentary disposition or operation of law, but the doing of any act which is the subject of the copyright as contemplated in section 28E may be licensed. 20

(2) Should the copyright referred to in subsection (1) vest in a representative of an indigenous community, whether a natural or juristic person, the indigenous community may— 20

(a) upon the death or liquidation of the said representative, as the case may be; or

(b) prior to the death or liquidation of the said representative, 25
by agreement as set out in the community protocol, transfer such copyright to a natural or juristic person, as the indigenous community may decide.

(3) Should the copyright referred to in subsection (1), vest in a representative of an indigenous community, such copyright shall automatically upon the death of the last living member of such indigenous community transfer to the National Trust. 30

Disputes

28K. (1) The Commission must accredit certain institutions which have the necessary capacity, to adjudicate any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013. 35

(2) Any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013, must first be instituted in an institution accredited as contemplated in subsection (1).

(3) No person appearing in proceedings before an institution contemplated in subsection (1) shall have the right to legal representation unless — 40

(a) the adjudicator and all other parties consent; or

(b) the adjudicator, after considering—

(i) the nature of the questions of law raised by the dispute;

(ii) the relative complexity and importance of the dispute; and

(iii) the comparative ability of the parties to represent themselves in the adjudication, 45

concludes that it would be unreasonable to expect the party to deal with the adjudication without legal representation.

(4) Any adjudication must take into account existing customary dispute resolution mechanisms. 50

(5) The decision of the institution referred to in subsection (1) may be served, executed and enforced as if it was an order of the High Court.

(6) Any party to proceedings before an institution referred to in subsection (1) may appeal to a court of law against any decision of such institution, and the appeal must be noted and dealt with in the manner prescribed by law for appeals against a civil order or decision of a single judge. 55

(8) Ondanks die bepalings van hierdie artikel kan enige inheemse gemeenskap 'n regsentiteit, besigheid of ander bedryf instel om inheemse kulturele uitdrukkings of kennis te bevorder of te benut: Met dien verstande dat enige kommersiële voordeel slegs eenkeer onderhewig is aan tantième, voordele of lisensiegelde, welke tantième, voordele of lisensiegelde deur die inheemse gemeenskap as eienaar, of die gebruiker van die intellektuele eiendom, aan die Fonds betaal kan word, indien die Fonds die eienaar is.

(9) Niks in hierdie Wet, of in die Wette in subartikel (6) bedoel, verhoed 'n inheemse gemeenskap daarvan om die Nasionale Trust te vra om tantième, voordele of lisensiegelde namens hulle in te samel, te bestuur en te versprei teen die betaling van 'n voorgeskrewe tarief nie.

Sessie en lisensies

28J. (1) Behalwe vir—

- (a) sessie van outeursreg aan 'n insamelingsvereniging; of
- (b) oordrag aan 'n behoorlik aangestelde verteenwoordiger van die gemeenskap,
- is die outeursreg in 'n inheemse werk nie oordraagbaar deur sessie, testamentêre beskikking of wetswerking nie, maar die verrigting van enige handeling wat die onderwerp is van die outeursreg soos in artikel 28E bedoel, kan gelisensieer word.
- (2) Sou die outeursreg in subartikel (1) bedoel in 'n verteenwoordiger van 'n inheemse gemeenskap vestig, hetsy 'n natuurlike of regspersoon, kan die inheemse gemeenskap—
- (a) by die dood of likwidasië van die verteenwoordiger, na gelang van die geval; of
- (b) voor die dood of likwidasië van die genoemde verteenwoordiger, by ooreenkoms soos uiteengesit in die gemeenskapsprotokol, sodanige outeursreg oordra aan 'n natuurlike of regspersoon, soos die inheemse gemeenskap kan besluit.
- (3) Sou die outeursreg in subartikel (1) bedoel in 'n verteenwoordiger van 'n inheemse gemeenskap vestig, dra die outeursreg outomaties oor na die Nasionale Trust by die dood van die laaste oorlewende lid van sodanige inheemse gemeenskap.

Geskille

- 28K.** (1) Die Kommissie moet sekere instellings akkrediteer wat die nodige kapasiteit het om 'n geskil te bereg wat ontstaan uit die toepassing van die Wysigingswet op Intellektuele Eiendomsreg, 2013.
- (2) 'n Geskil wat ontstaan uit die toepassing van die Wysigingswet op Intellektuele Eiendomsreg, 2013, moet eers in 'n instelling ingestel word wat soos in subartikel (1) beoog geakkrediteer is
- (3) Geen persoon wat in verrigtinge voor 'n instelling in subartikel (1) beoog verskyn, is geregtig op regsverteenvoording nie tensy—
- (a) die beregter en alle ander partye instem; of
- (b) die beregter, na oorweging van—
- (i) die aard van die regsvrae wat uit die geskil na vore kom;
- (ii) die relatiewe ingewikkeldheid en gewig van die geskil; en
- (iii) die betreklike vermoë van die partye om hulself in die beregting te verteenwoordig,
- tot die slotsom kom dat dit onredelik sal wees om van die party te verwag om die beregting sonder regsverteenvoording te hanteer.
- (4) Enige beregting moet bestaande gewoonte-geskilbeslegtings-meganismes in ag neem.
- (5) Die beslissing van die instelling in subartikel (1) bedoel, kan beteken, uitgevoer en toegepas word asof dit 'n bevel van die Hoë Hof is.
- (6) 'n Party in verrigtinge voor 'n instelling in subartikel (1) bedoel, kan by 'n geregshof appèl aanteken teen enige beslissing van sodanige instelling, en die appèl moet aangeteken en hanteer word op die wyse by wet voorgeskryf vir appèlle teen 'n siviele bevel of besluit van 'n enkele regter.

(7) The Minister shall prescribe the fees, processes and formalities relating to the institution and adjudication of a dispute.

National Council for Indigenous Knowledge

- 28L.** (1) The Minister shall establish a National Council for Indigenous Knowledge. 5
- (2) The Council shall consist of not less than 15 members, appointed by the Minister.
- (3) The Minister shall designate one of the members of the Council as the Chairperson of the Council.
- (4) Before appointing any person referred to in subsection (2), the Minister must— 10
- (a) by notice in the *Gazette*, and any other widely circulated means of communication call for nominees and state the criteria for such nominations;
 - (b) specify a period within which nominations must be submitted; and 15
 - (c) consider all nominations before making an appointment.
- (5) In appointing the members of the Council, the Minister may consult—
- (a) the Ministers responsible for— 20
 - (i) agriculture;
 - (ii) arts and culture;
 - (iii) environmental affairs;
 - (iv) health; and
 - (v) science and technology;
 - (b) organised local government; 25
 - (c) an association of traditional healers;
 - (d) the National House of Traditional Leaders;
 - (e) academia;
 - (f) the legal profession;
 - (g) organised commerce and industry; or 30
 - (h) any other relevant body or institution.
- (6) The Council shall—
- (a) be broadly representative of indigenous communities from different cultures within the Republic; and
 - (b) at all times have as members— 35
 - (i) at least two persons with expertise and extensive knowledge in, and patronage of, traditional cultures and values of indigenous communities;
 - (ii) at least two persons with expertise and extensive knowledge in, and patronage of, traditional artistic, literary, musical works and performing arts; and 40
 - (iii) at least two persons with expertise and extensive knowledge of the law.
- (7) The Council shall have at least seven meetings per year and a quorum shall consist of half of the appointed members, plus one. 45
- (8) The members of the Council are appointed on such terms and conditions, including remuneration, as may be determined by the Minister in consultation with the Minister of Finance.
- (9) A member of the Council shall hold office for a period of three years and may be reappointed, upon the expiry of that period, for a further period of three years. 50
- (10) For the sake of continuity, succession planning must include reappointment of members in such a manner that subsections (6) and (9) are always adhered to.
- (11) The Minister may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a member of the Council for— 55
- (a) non-performance;
 - (b) serious misconduct; or
 - (c) conduct that undermines the integrity or objectives of the Council. 60
- (12) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may dissolve the Council—

(7) Die Minister skryf die gelde, prosesse en formaliteite voor in verband met die instelling en beregting van 'n geskil.

Nasionale Raad vir Inheemse Kennis

- 28L.** (1) Die Minister moet 'n Nasionale Raad vir Inheemse Kennis instel. 5
- (2) Die Raad bestaan uit minstens 15 lede, deur die Minister aangestel.
- (3) Die Minister wys een van die lede van die Raad aan as die Voorsitter van die Raad.
- (4) Voordat die Minister 'n persoon in subartikel (2) bedoel aanstel, moet die Minister— 10
- (a) by kennisgewing in die *Staatskoerant*, en enige kommunikasiemiddel wat wyd gesirkuleer word, benoemings aanvra en die maatstawwe vir sodanige benoemings stel;
- (b) 'n tydperk spesifiseer waarin benoemings voorgelê moet word; en
- (c) alle benoemings oorweeg voordat 'n aanstelling gemaak word. 15
- (5) By aanstelling van die lede van die Raad kan die Minister oorleg pleeg met—
- (a) die Ministers verantwoordelik vir— 20
- (i) landbou;
- (ii) kuns en kultuur;
- (iii) omgewingsake;
- (iv) gesondheid; en
- (v) wetenskap en tegnologie;
- (b) georganiseerde plaaslike regering;
- (c) 'n vereniging van tradisionele genesers; 25
- (d) die Nasionale Raad van Tradisionele Leiers;
- (e) akademia;
- (f) die regsprofessie;
- (g) georganiseerde handel en nywerheid; of
- (h) enige ander toepaslike liggaam of instelling. 30
- (6) Die Raad moet—
- (a) in die breë verteenwoordigend wees van inheemse gemeenskappe van verskillende kulture binne die Republiek; en
- (b) te alle tye as lede hê— 35
- (i) ten minste twee persone met kundigheid en uitgebreide kennis oor, en beskerming van, tradisionele kulture en waardes van inheemse gemeenskappe;
- (ii) ten minste twee persone met kundigheid en uitgebreide kennis van, en beskerming van, tradisionele kuns-, letterkundige en musiekwerke en uitvoerende kunste; en 40
- (iii) ten minste twee persone met kundigheid en uitgebreide regskennis.
- (7) Die Raad vergader ten minste sewe keer per jaar, en die helfte van die aangestelde lede plus een vorm 'n kworum.
- (8) Die lede van die Raad word op sodanige terme en bedinge, met inbegrip van besoldiging, aangestel soos wat deur die Minister in oorleg met die Minister van Finansies bepaal mag word. 45
- (9) 'n Lid van die Raad bekleed die amp vir 'n tydperk van drie jaar en kan heraanstelling word, by die verstryking van daardie tydperk, vir 'n verdere tydperk van drie jaar. 50
- (10) Ter wille van kontinuïteit moet opvolgingsbeplanning heraanstelling van lede op so 'n wyse insluit dat aan subartikels (6) en (9) voldoen word.
- (11) Die Minister kan, behoudens die 'Promotion of Administrative Justice Act, 2000' (Wet No. 3 van 2000), 'n lid van die Raad verwyder vir— 55
- (a) nieprestasie;
- (b) ernstige wangedrag; of
- (c) optrede wat die integriteit of oogmerke van die Raad ondermyn.
- (12) Behoudens die 'Promotion of Administrative Justice Act, 2000' (Wet No. 3 van 2000), kan die Minister die Raad ontbind— 60

- (a) if the Council fails to perform its functions in an effective and efficient manner; and
- (b) on the grounds of mismanagement.

(13) When the Minister dissolves the Council in terms of subsection (12), the Minister may appoint an interim body for the continued governance and control of the affairs of the Council, on such conditions as the Minister may determine.

(14) The body contemplated in subsection (13) must be appointed for a period not exceeding six months or until the new Council is appointed in terms of subsection (2), whichever is the lesser.

(15) The Commission shall be responsible for the administration of the Council, and its subcommittees.

Functions of Council

28M. (1) The Council shall—

- (a) advise the Minister on any matter concerning indigenous cultural expressions or knowledge;
- (b) advise the registrars of patents, copyright, trade marks, and designs on any matter relating to the registration of indigenous cultural expressions or knowledge;
- (c) advise the Minister on matters relating to performances of traditional work;
- (d) advise on the integrity of a database of intellectual property in relation to indigenous cultural expressions or knowledge;
- (e) perform such further functions as provided for in the—
 - (i) Patents Act, 1978 (Act No. 57 of 1978);
 - (ii) Trade Marks Act, 1993 (Act No. 194 of 1993);
 - (iii) Designs Act, 1993 (Act No. 195 of 1993); and
 - (iv) Performers' Protection Act, 1967 (Act No. 11 of 1967);
- (f) refer any dispute received, to an institution contemplated in section 28K(1); and
- (g) carry out such tasks as assigned to it from time to time by the Minister.

(2) The Council may—

- (a) appoint any person to assist the Council with the performance of any specific act, task or assignment, or to investigate any matter relating to its functions;
- (b) constitute and maintain such committees as it may deem necessary;
- (c) appoint as members of the committees any of its members and any other persons, for such periods of time as the Council may determine; and
- (d) refer to such committees any tasks or matters as may be necessary to enable the Council to carry out its functions.

(3) The Minister may, in consultation with the Minister of Finance, prescribe the tariff of fees payable for—

- (a) any work performed or services rendered by any person at the specific request or instruction of the Council;
- (b) access by any person to the results of, or other information in connection with any research performed or information collected by the Council; and
- (c) access by any person to the databases contemplated in section 28C.

(4) The Council may recommend to the Minister appropriate measures to ensure the effective implementation of the Act in relation to all matters pertaining to indigenous cultural expressions or knowledge relating to performers' rights, copyright, trade marks, designs and patents.

Compliance with international agreements

28N. (1) The Minister may by notice in the *Gazette* provide that any provision of this Act specified in such notice shall, in the case of any country so specified, apply so that—

- (a) indien die Raad versuim om sy werksaamhede op 'n effektiewe en doeltreffende wyse te verrig; en
- (b) op grond van wanbestuur.
- (13) Wanneer die Minister die Raad ingevolge subartikel (12) ontbind, kan die Minister 'n tussentydse liggaam aanstel vir die voortgesette bestuur en beheer van die sake van die Raad, op sodanige voorwaardes soos wat die Minister mag bepaal. 5
- (14) Die liggaam in subartikel (13) beoog moet vir 'n tydperk van hoogstens ses maande aangestel word of totdat die nuwe Raad ooreenkomstig subartikel (2) aangestel word, welke tydperk ook al die kortste is. 10
- (15) Die Kommissie is verantwoordelik vir die administrasie van die Raad en sy subkomitees.

Werksaamhede van Raad

28M. (1) Die Raad—

- (a) adviseer die Minister oor enige aangeleentheid in verband met inheemse kulturele uitdrukkings of kennis; 15
- (b) adviseer die registrateurs van patente, outeursreg, handelsmerke en modelle oor enige aangeleentheid betreffende die registrasie van inheemse kulturele uitdrukkings of kennis; 20
- (c) adviseer die Minister oor aangeleenthede betreffende uitvoerings van tradisionele werk; 20
- (d) adviseer oor die integriteit van 'n databasis van intellektuele eiendom in verband met inheemse kulturele uitdrukkings of kennis;
- (e) verrig sodanige verdere werksaamhede soos bepaal in die— 25
- (i) Wet op Patente, 1978 (Wet No. 57 van 1978);
 - (ii) Wet op Handelsmerke, 1993 (Wet No. 194 van 1993);
 - (iii) Wet op Modelle, 1993 (Wet No. 195 van 1993); en
 - (iv) Wet op Beskerming van Voordraers, 1967 (Wet No. 11 van 1967);
- (f) moet enige geskil wat ontvang is, na 'n instelling beoog in artikel 8K(1) verwys; en 30
- (g) moet sodanige take uitvoer wat die Minister van tyd tot tyd aan hom toewys.
- (2) Die Raad kan—
- (a) 'n persoon aanstel om die Raad by te staan in die uitvoering van enige bepaalde handeling, taak of toewysing, of om enige aangeleentheid in verband met sy werksaamhede te ondersoek; 35
- (b) sodanige komitees saamstel en onderhou wat hy nodig mag ag;
- (c) enige van sy lede as lede van die komitees en enige ander persone vir sodanige tydperke aanstel soos wat die Raad kan bepaal; of 40
- (d) enige take of aangeleenthede wat nodig mag wees na sodanige komitees verwys om die Raad in staat te stel om sy werksaamhede uit te voer.
- (3) Die Minister kan, in oorleg met die Minister van Finansies, die tarief bepaal van gelde betaalbaar vir— 45
- (a) enige werk verrig of dienste gelewer deur enige persoon by die bepaalde versoek of instruksie van die Raad;
- (b) toegang deur enige persoon tot die resultate van, of ander inligting in verband met, enige navorsing gedoen of inligting ingesamel deur die Raad; of 50
- (c) toegang deur enige persoon tot die databasisse in artikel 28C beoog.
- (4) Die Raad kan gepaste maatreëls by die Minister aanbeveel om die effektiewe toepassing van die Wet in verband met alle aangeleenthede oor inheemse kulturele uitdrukkings of kennis ten opsigte van voordraersregte, outeursreg, handelsmerke, modelle en patente te verseker. 55

Voldoening aan internasionale ooreenkomste

28N. (1) Die Minister kan by kennisgewing in die *Staatskoerant* bepaal dat enige bepaling van hierdie Wet in sodanige kennisgewing vermeld van toepassing is op 'n land aldus vermeld sodat—

- (a) a community recognised in the specified country as an indigenous community shall be deemed to be an indigenous community as defined in this Act; and
- (b) a traditional work recognised in the specified country as a traditional work shall be deemed to be a traditional work as defined in this Act. 5
- (2) The Minister may in the notice contemplated in subsection (1) make the provisions of this Act applicable to the following in respect of a country listed in the notice:
 - (a) Its citizens or subjects;
 - (b) persons who at material times are domiciled or resident in the listed country and who are members of an indigenous community in that country; and 10
 - (c) juristic persons incorporated under the laws of the specified country and representing indigenous communities of that country.
- (3) The notice referred to in subsection (1) may— 15
 - (a) include exceptions or modifications to the application of the Act in respect of a specified country;
 - (b) provide for general application of the Act; or
 - (c) limit application of the Act to such types of traditional works as may be specified. 20
- (4) No notice shall be issued under this section in respect of any country which is not a party to a convention relating to copyright to which the Republic is also a party, unless the Minister is satisfied that, in respect of the class of works to which the notice relates, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright in traditional works under this Act.”. 25

Amendment of section 39 of Act 98 of 1978, as amended by section 4 of Act 9 of 2002

5. Section 39 of the Copyright Act, 1978 (Act No. 98 of 1978), is hereby amended—
- (a) by the substitution for paragraph (c) of the following paragraph: 30

“(c) in consultation with the Minister of Finance, prescribing the remuneration and allowances of members of the advisory committee referred to in section 40, the Council referred to in section 28L, and of [its] their subcommittees, and the conditions upon which such members shall be appointed;”;
 - (b) by the substitution for paragraph (cA) of the following paragraph: 35

“(cA) in consultation with the Minister of Finance, providing for the establishment, composition, funding and functions of collecting societies contemplated in section 9A, and any other matter that it may be necessary or expedient to regulate for the proper functioning of such societies whether in respect of copyright or any other type of intellectual property;”;
 - (c) by the addition after paragraph (cA) of the following paragraphs: 40

“(cB) providing for the recording of indigenous cultural expressions or knowledge as contemplated in section 28C, including issues related to— 45

 - (i) the manner in which information on indigenous cultural expressions or knowledge is kept;
 - (ii) fees payable for access to inspect the databases;
 - (iii) processes and formalities related to the submission of an application; and 50
 - (iv) criteria to be met for indigenous cultural expressions or knowledge to be entered into the databases;

(cC) prescribing the nature of the entities envisaged by section 28I(8) including issues related to—

- (a) 'n gemeenskap wat in die vermelde land erken word as 'n inheemse gemeenskap, geag word 'n inheemse gemeenskap te wees soos in hierdie Wet omskryf; en
- (b) 'n tradisionele werk wat in die vermelde land erken word as 'n tradisionele werk word geag 'n tradisionele werk soos in hierdie Wet omskryf te wees. 5
- (2) Die Minister kan in die kennisgewing in subartikel (1) beoog die bepalings van hierdie Wet van toepassing maak op die volgende ten opsigte van 'n land in die kennisgewing vermeld:
- (a) Sy burgers of onderdane; 10
- (b) persone wat op wesenlike tye in die vermelde land woon of woonagtig is en wat lede van 'n inheemse gemeenskap in daardie land is; en
- (c) regspersone ingelyf kragtens die wette van die vermelde land en wat inheemse gemeenskappe van daardie land verteenwoordig.
- (3) Die kennisgewing in subartikel (1) bedoel kan— 15
- (a) uitsonderings of veranderings aan die toepassing van die Wet ten opsigte van 'n vermelde land insluit;
- (b) vir 'n algemene toepassing van die Wet voorsiening maak; of
- (c) toepassing van die Wet beperk tot sodanige tipes tradisionele werke soos wat bepaal kan word. 20
- (4) Geen kennisgewing sal kragtens hierdie artikel uitgereik word ten opsigte van enige land wat nie 'n party is tot 'n konvensie betreffende outeursreg waartoe die Republiek ook 'n party is nie, tensy die Minister tevrede is dat, ten opsigte van die klas van werke waarmee die kennisgewing verband hou, voorsiening gemaak is of gemaak sal word 25
- kragtens die wette van daardie land waarby voldoende beskerming aan die eienaars van outeursreg in tradisionele werke kragtens hierdie Wet verleen sal word.”.

Wysiging van artikel 39 van Wet 98 van 1978, soos gewysig deur artikel 4 van Wet 9 van 2002 30

5. Artikel 39 van die Wet op Outeursreg, 1978 (Wet No. 98 van 1978), word hierby gewysig—

- (a) deur paragraaf (c) deur die volgende paragraaf te vervang:
- “(c) in oorleg met die Minister van Finansies, wat die vergoeding en toelae van lede van die advieskomitee in artikel 40 bedoel, die Raad in artikel 28L bedoel, en van [sy] hul subkomitees, en die voorwaardes waarop sodanige lede aangestel word, voorskryf;”;
- (b) deur paragraaf (cA) deur die volgende paragraaf te vervang:
- “(cA) in oorleg met die Minister van Finansies, wat voorsiening maak vir die instelling, samestelling, befondsing en funksies van die insamelingsverenigings in artikel 9A bedoel, en enige ander aangeleentheid wat nodig of doenlik mag wees om die behoorlike funksionering van sodanige verenigings te reguleer hetsy ten opsigte van outeursreg of enige ander soort intellektuele eiendom;”;
- (c) deur die volgende paragrawe na paragraaf (cA) by te voeg:
- “(cB) wat voorsiening maak vir die optekening van inheemse kulturele uitdrukkings of kennis soos in artikel 28C beoog, met inbegrip van aangeleenthede wat verband hou met—
- (i) die wyse waarop inligting oor inheemse kulturele uitdrukkings of kennis gehou word; 35
- (ii) gelde betaalbaar vir toegang om die databasisse te inspekteer;
- (iii) prosesse en formaliteite betreffende die voorlegging van 'n aansoek; en 50
- (iv) maatstawwe waaraan voldoen moet word sodat inheemse kulturele uitdrukkings in die databasisse aangeteken kan word. 55
- (cC) waarin die aard van die entiteite deur artikel 28I(8) beoog voorgeskryf word, met inbegrip van aangeleenthede wat verband hou met— 60

- (i) governance of the entities; and
- (ii) interaction of the entities with the National Trust and the Council;
- (cD) providing for the fees, processes and formalities related to the submission and adjudication of a dispute set out in section 28K; and
- (cE) providing for the appointment of a person to act on behalf of an indigenous community which is no longer in existence;”.

Insertion of section 39A in Act 98 of 1978

6. The following section is hereby inserted after section 39 of the Copyright Act, 1978 (Act No. 98 of 1978):

“Guidelines

- 39A.** (1) The Minister may issue guidelines on any aspect of the Intellectual Property Laws Amendment Act, 2013, including—
- (a) protection of indigenous cultural expressions or knowledge;
 - (b) reducing traditional work that is eligible for copyright due to it being capable of substantiation from the collective memory of the relevant indigenous community, to material form for purposes of protection thereof;
 - (c) the databases, in so far as it relates to indigenous cultural expressions or knowledge;
 - (d) the National Trust and Fund, in so far as it relates to indigenous cultural expressions or knowledge;
 - (e) the Council, in so far as it relates to indigenous cultural expressions or knowledge; and
 - (f) the dispute process as set out in section 28K.”.

Amendment of section 1 of Act 194 of 1993, as amended by section 65 of Act 38 of 1997

7. Section 1 of the Trade Marks Act, 1993 (Act No. 194 of 1993), is hereby amended by the insertion after the heading “Part XII Certification Trade Marks and Collective Trade Marks (sections 42 and 43)” of the following heading:

“Part XIIA Traditional terms and expressions and geographical indications (sections 43A to 43L)”.

Amendment of section 2 of Act 194 of 1993

8. Section 2 of the Trade Marks Act, 1993 (Act No. 194 of 1993), is hereby amended—

- (a) by the insertion in subsection (1) after the definition of “certification trade mark” of the following definition:
 - “**‘collecting society’** means a collecting society created by the Copyright Act, this Act, or by agreement and which amongst others—
 - (a) manages matters related to rights in trade marks;
 - (b) negotiates for and collects licence fees and benefits on behalf of its members; and
 - (c) distributes licence fees and benefits to trade mark owners;”;
- (b) by the insertion in subsection (1) after the definition of “collective trade mark” of the following definition:
 - “**‘community protocol’** means a protocol developed by an indigenous community that describes the structure of the indigenous community and its claims to indigenous cultural expressions or knowledge and indigenous terms or expressions or geographical indications, and provides procedures for prospective users of such indigenous cultural expressions or knowledge or indigenous terms or expressions or geographical indications, to seek the community’s prior informed consent, negotiate mutually agreed terms and benefit-sharing agreements;”;

- (i) beheer van die entiteite; en
- (ii) interaksie van die entiteite met die Nasionale Trust en die Raad.
- (cD) wat voorsiening maak vir die gelde, prosesse en formaliteite wat met die voorlegging en beregting van 'n geskil in artikel 28K uiteengesit verband hou; en 5
- (cE) wat voorsiening maak vir die aanstelling van 'n persoon om namens 'n inheemse gemeenskap wat nie meer bestaan nie, op te tree;”.

Invoeging van artikel 39A in Wet 98 van 1978 10

6. Die volgende artikel word hierby na artikel 39 van die Wet op Outeursreg, 1978 (Wet No. 98 van 1978), ingevoeg:

“Riglyne

- 39A.** Die Minister kan riglyne uitreik oor enige aspek van die Wysigingswet op Intellektuele Eiendomsreg, 2013, met inbegrip van— 15
- (a) beskerming van inheemse kulturele uitdrukkings of kennis;
 - (b) die vaslegging van tradisionele werk wat kwalifiseer vir outeursreg omdat dit uit die gesamentlike geheue van die betrokke inheemse gemeenskap gesubstansieer kan word, tot materiële vorm ten einde dit te beskerm; 20
 - (c) die databasisse, vir sover dit met inheemse kulturele uitdrukkings of kennis verband hou;
 - (d) die Nasionale Trust en Fonds, vir sover dit met kulturele uitdrukkings of kennis verband hou;
 - (e) die Raad, vir sover dit met inheemse kulturele uitdrukkings of kennis verband hou; en 25
 - (f) die geskilproses soos in artikel 28K uiteengesit.”.

Wysiging van artikel 1 van Wet 194 van 1993, soos gewysig deur artikel 65 van Wet 38 van 1997

7. Artikel 1 van die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), word hierby gewysig deur na die opskrif “Deel XII Waarmerkingshandelsmerke en Versamelhandelsmerke (artikels 42 en 43)” die volgende opskrif in te voeg: 30

“Deel XIII Tradisionele terme en uitdrukkings en geografiese aanduidings (artikels 43A tot 43L)”.

Wysiging van artikel 2 van Wet 194 van 1993 35

8. Artikel 2 van die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), word hierby gewysig—

- (a) deur in subartikel (1) voor die omskrywing van “akte van sekerheidstelling” die volgende omskrywing in te voeg:
 - “**‘afgeleide inheemse term of uitdrukking’** enige term of uitdrukking 40
 - wat die onderwerp van hierdie Wet uitmaak, toegepas op enige vorm van inheemse term of uitdrukking erken deur 'n inheemse gemeenskap as dat dit 'n inheemse of tradisionele oorsprong het, en waarvan 'n wesenlike deel afgelei is van inheemse kulturele uitdrukkings of kennis ongeag of sodanige afgeleide term of uitdrukking voor of na die inwerkingtreding 45
 - van die Wysigingswet op Intellektuele Eiendomsreg, 2013, afgelei is;”;
- (b) deur in subartikel (1) na die omskrywing van “beperking” die volgende omskrywing in te voeg:
 - “**‘databasis’** die betrokke afdeling van die Nasionale Databasis vir Inheemse Kennis soos in artikel 1 van die Wet op Outeursreg omskryf;”;
- (c) deur in subartikel (1) na die omskrywing van “dienste” die volgende omskrywings in te voeg:
 - “**‘Fonds’** die Nasionale Trustfonds vir Inheemse Kennis soos in artikel 1 van die Wet op Outeursreg omskryf;”

- (c) by the insertion in subsection (1) after the definition of “convention country” of the following definitions:
- “**‘Copyright Act’** means the Copyright Act, 1978 (Act No. 98 of 1978);
‘Council’ means the National Council for Indigenous Knowledge as defined in section 1 of the Copyright Act;”;
- (d) by the insertion in subsection (1) after the definition of “court” of the following definition:
- “**‘database’** means the relevant section of the National Database for Indigenous Knowledge as defined in section 1 of the Copyright Act;”;
- (e) by the insertion in subsection (1) after the definition of “deed of security” of the following definition:
- “**‘derivative indigenous term or expression’** means any term or expression forming the subject of this Act, applied to any form of indigenous term or expression recognised by an indigenous community as having an indigenous or traditional origin, and a substantial part of which was derived from indigenous cultural expressions or knowledge irrespective of whether such derivative indigenous term or expression was derived before or after the commencement of the Intellectual Property Laws Amendment Act, 2013;”;
- (f) by the insertion in subsection (1) after the definition of “device” of the following definitions:
- “**‘Fund’** means the National Trust Fund for Indigenous Knowledge as defined in section 1 of the Copyright Act;
- ‘geographical indication’** in as far as it relates to indigenous cultural expressions or knowledge, means an indication which identifies goods or services as originating in the territory of the Republic or in a region or locality in that territory, and where a particular quality, reputation or other characteristic of the goods or services is attributable to the geographical origin of the goods or services, including natural and human factors;
- ‘indigenous community’** means any recognisable community of people originated in or historically settled in a geographic area or areas located within the borders of the Republic, as such borders existed at the date of commencement of the Intellectual Property Laws Amendment Act, 2013, characterised by social, cultural and economic conditions which distinguish them from other sections of the national community, and who identify themselves and are recognised by other groups as a distinct collective;
- ‘indigenous cultural expressions or knowledge’** means any form, tangible or intangible, or a combination thereof, in which traditional culture and knowledge are embodied, passed on between generations, and tangible or intangible forms of creativity of indigenous communities, including, but not limited to—
- (a) phonetic or verbal expressions, such as stories, epics, legends, poetry, riddles and other narratives, words, signs, names and symbols;
- (b) musical or sound expressions, such as songs, rhythms, and instrumental music, the sounds which are the expression of rituals;
- (c) expressions by action, such as dances, plays, ceremonies, rituals, expressions of spirituality or religion, sports, traditional games, puppet performances, and other performances, whether fixed or unfixed; and
- (d) tangible expressions, such as material expressions of art, handicrafts, architecture, or tangible spiritual forms, or expressions of sacred places;
- ‘indigenous term or expression’** means a literary, artistic or musical term or expression with an indigenous or traditional origin and a traditional character, including indigenous cultural expressions or knowledge which was created by persons who are or were members, currently or historically, of an indigenous community and which is regarded as part of the heritage of the community;”;

- ‘gemeenskapsprotokol’** ’n protokol deur ’n inheemse gemeenskap ontwikkel wat die struktuur van ’n inheemse gemeenskap en sy aansprake op inheemse kulturele uitdrukkings of geografiese aanduidings beskryf, en prosedures bepaal vir voornemende gebruikers van sodanige inheemse kulturele uitdrukkings of kennis of inheemse terme of uitdrukkings of geografiese aanduiders, om die gemeenskap se vooraf ingeligte instemming te kry, onderling ooreengekome terme en voordeeldelingsooreenkomste te onderhandel;
- ‘geografiese aanduiding’**, vir sover dit verband hou met inheemse kulturele uitdrukkings of kennis, ’n aanduiding wat identifiseer dat goedere of dienste van binne die grondgebied van die Republiek van ’n streek of plek in daardie grondgebied van oorsprong is en waar ’n bepaalde kenmerk, reputasie of ander karaktertrek van die goedere of dienste aan die geografiese oorsprong van die goedere of dienste toegeskryf kan word, met inbegrip van natuurlike en menslike faktore;”;
- (d) deur in subartikel (1) na die omskrywing van “hof” die volgende omskrywings in te voeg:
- “ **‘inheemse gemeenskap’** enige herkenbare gemeenskap van mense wat ontstaan het in of histories gesetel is in ’n geografiese area of areas, binne die grense van die Republiek soos sodanige grense bestaan het op die datum van inwerkingtreding van die Wysigingswet op Intellektuele Eïndomsreg, 2013, gekenmerk deur sosiale, kulturele en ekonomiese omstandighede wat hulle onderskei van ander dele van die nasionale gemeenskap, wat hulself identifiseer en deur ander groepe erken word as ’n afsonderlike kollektief;
- ‘inheemse kulturele uitdrukkings of kennis’** enige vorm, tasbaar of ontasbaar, of ’n kombinasie daarvan, waarin tradisionele kultuur en kennis beliggaam word, tussen generasies oorgelewer, en tasbare of ontasbare vorms van kreatiwiteit van inheemse gemeenskappe, met inbegrip van, maar nie beperk nie tot—
- (a) fonetiese of verbale uitdrukkings, soos stories, heldedigte, legendes, poësie, raaisels en ander vertellings, woorde, tekens, name en simbole;
- (b) musiek- of klankuitdrukkings, soos liederes, ritmes en instrumentale musiek, waarvan die klanke die uitdrukking van rituele is;
- (c) uitdrukkings deur aksie, soos danse, toneelstukke, seremonies, rituele, uitdrukkings van spiritualiteit of geloof, sport en tradisionele spele, poppespele, en ander uitvoerings, hetsy vasgelê of nie vasgelê nie; en
- (d) tasbare uitdrukkings, soos wesenlike uitdrukkings van kuns, kunsvlyt, argitektuur, of tasbare spirituele vorms, of uitdrukkings van gewyde plekke;
- ‘inheemse term of uitdrukking’** ’n letterkundige, kuns- of musiekterm of -uitdrukking met ’n inheemse of tradisionele oorsprong en ’n tradisionele karakter, met inbegrip van inheemse kulturele uitdrukkings of kennis wat deur persone geskep is wat lede is of was, huidig of histories, van ’n inheemse gemeenskap en wat as deel van die erfenis van die gemeenskap gesien word;
- ‘insamelingsvereniging’** ’n insamelingsvereniging geskep deur die Wet op Outeursreg, hierdie Wet, of by ooreenkoms en wat onder andere—
- (a) aangeleenthede met betrekking tot regte in handelsmerke bestuur;
- (b) namens sy lede om lisensiegelde en voordele onderhandel en dit insamel; en
- (c) lisensiegelde en voordele na handelsmerkeienaars versprei;
- ‘Kommissie’** die Kommissie ingevolge artikel 185 van die Maatskappywet, 2008 (Wet No. 71 van 2008), ingestel;”;
- (e) deur in subartikel (1) na die omskrywing van “Minister” die volgende omskrywing in te voeg:
- “ **‘Nasionale Trust’** die Nasionale Trust vir Inheemse Kennis by artikel 28I van die Wet op Outeursreg ingestel en wat ingevolge artikel 43G funksioneer as die Nasionale Trust vir tradisionele terme of uitdrukkings;”;

- (g) by the insertion after the definition of “Minister” of the following definition:
“ **‘National Trust’** means the National Trust for Indigenous Knowledge established by section 28I of the Copyright Act and which functions as the National Trust for traditional terms or expressions in terms of section 43G;”; and
- (h) by the insertion in subsection (1) after the definition of “trade mark” of the following definition:
“ **‘traditional term or expression’** includes an indigenous term or expression and a derivative indigenous term or expression;”.

Insertion of Part XIIA in Act 194 of 1993

9. The following Part is hereby inserted in the Trade Marks Act, 1993 (Act No. 194 of 1993), after section 43:

“Part XIIA

**CERTIFICATION TRADE MARKS AND COLLECTIVE
TRADE MARKS**

Application to traditional terms and expressions and geographical indications

43A. (1) Subject to Part XIIA, the provisions of this Act shall, except in so far as is otherwise provided in the said Part XIIA, and in so far as they can be applied, apply to traditional terms and expressions and geographical indications.

(2) Nothing in the sections contemplated in subsection (1) shall be construed as conferring any rights on any person in respect of intellectual property which is not a traditional term or expression.

Registrable traditional trade marks

43B. (1) Subject to this section and subject to any rights in respect of a traditional term or expression acquired by any person prior to the commencement of the Intellectual Property Laws Amendment Act, 2013, a traditional term or expression shall not be capable of constituting a trade mark.

(2) A traditional term or expression shall be capable of constituting—

- (a) a certification trade mark or a collective trade mark; or
(b) a geographical indication.

(3) In order to be registrable as a certification or collective trade mark, a traditional term or expression shall be capable of distinguishing the goods or services of an indigenous community in respect of which it is registered or proposed to be registered, from the goods or services of another community or person, either generally or where the traditional term or expression is registered or proposed to be registered subject to limitations, in relation to use within those limitations.

(4) Geographical indications or other marks of geographical origin may be registered as certification marks: Provided that the registrars of patents, copyright, trade marks and designs shall clearly indicate in the register that the certification mark is a geographical indication.

(5) Geographical indications or other marks of geographical origin may be registered as collective trade marks: Provided that the registrars of patents, copyright, trade marks and designs shall clearly indicate in the register that the collective mark is a geographical indication.

- (f) deur in subartikel (1) na die omskrywing van “patentagent” die volgende omskrywing in te voeg:
“**‘Raad’** die Nasionale Raad vir Inheemse Kennis soos in artikel 1 van die Wet op Outeursreg omskryf;”;
- (g) deur in subartikel (1) na die omskrywing van “sessie” die volgende omskrywing in te voeg:
“**‘tradisionele term of uitdrukking’** ook ’n inheemse term of uitdrukking en ’n afgeleide inheemse term of uitdrukking;”;
- (h) deur in subartikel (1) na die omskrywing van “waarmerkingshandelsmerk” die volgende omskrywing in te voeg:
“**‘Wet op Outeursreg’** die Wet op Outeursreg, 1978 (Wet No. 98 van 1978);”.

Invoeging van Deel XIIA in Wet 194 van 1993

9. Die volgende Deel word hierby in die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), na artikel 43 ingevoeg:

“Deel XIIA

SERTIFISERINGSHANDELSMERKE EN VERSAMELHANDELSMERKE

Toepassing op tradisionele terme en uitdrukkings en geografiese aanduidings

43A. (1) Behoudens Deel XIIA, is die bepalings van hierdie Wet, buiten vir sover daar anders bepaal word in die genoemde Deel XIIA, en vir sover dit toegepas kan word, van toepassing op tradisionele terme en uitdrukkings en geografiese aanduidings.

(2) Niks in die artikels in subartikel (1) beoog word uitgelê as dat dit enige regte aan enige persoon verleen ten opsigte van die intellektuele eiendom wat nie ’n tradisionele term of uitdrukking is nie.

Registreerbare tradisionele handelsmerke

43B. (1) Behoudens hierdie artikel en behoudens enige regte ten opsigte van ’n tradisionele term of uitdrukking wat ’n persoon voor die inwerkingtreding van die Wysigingswet op Intellektuele Eendomsreg, 2013, bekom het, kan ’n tradisionele term of uitdrukking nie ’n handelsmerk uitmaak nie.

(2) ’n Tradisionele term of uitdrukking kan—

(a) ’n sertifiseringshandelsmerk of ’n versamelhandelsmerk uitmaak; of

(b) ’n geografiese aanduiding uitmaak.

(3) Ten einde as ’n sertifiserings- of versamelhandelsmerk geregistreer te kan word, moet ’n tradisionele term of uitdrukking die goedere of dienste van ’n inheemse gemeenskap ten opsigte waarvan dit geregistreer is of voorgestel is om geregistreer te word, kan onderskei van die goedere of dienste van ’n ander gemeenskap of persoon, hetsy oor die algemeen of waar die tradisionele term of uitdrukking geregistreer is of voorgestel is om geregistreer te word behoudens beperkings, in verband met gebruik binne daardie beperkings.

(4) Geografiese aanduidings of ander merke van geografiese oorsprong kan as sertifiseringsmerke geregistreer word: Met dien verstande dat die registrateurs van patente, outeursreg, handelsmerke en modelle duidelik in die register sal aandui dat die sertifiseringsmerk ’n geografiese aanduiding is.

(5) Geografiese aanduidings of ander merke van geografiese oorsprong kan as versamelhandelsmerke geregistreer word: Met dien verstande dat die registrateur duidelik in die register sal aandui dat die versamelmerk ’n geografiese aanduiding is.

- (6) No right in respect of a derivative indigenous term or expression or knowledge provided for in the Intellectual Property Laws Amendment Act, 2013, shall be eligible for registration unless—
- (a) prior informed consent has been obtained from the relevant authority or indigenous community; 5
 - (b) disclosure of the indigenous cultural expressions or knowledge has been made to the Commission; and
 - (c) a benefit-sharing agreement between the applicant and the relevant authority or indigenous community has been concluded.
- (7) If an indigenous community has established a community protocol, the interaction with the indigenous community contemplated in subsection (6) must take such community protocol into account. 10
- (8) A traditional term or expression or geographical indication shall only be registrable as per this section if—
- (a) the traditional term or expression or geographical indication is a derivative indigenous term or expression or geographical indication and was created on or after the date of commencement of the Intellectual Property Laws Amendment Act, 2013, and the community from which the term or expression, or a substantial part thereof originated, is or was an indigenous community when the term or expression was created; or 15
 - (b) the traditional term or expression or geographical indication was passed down from a previous generation. 20

Unregistrable traditional trade marks

- 43C.** (1) The following traditional terms and expressions and geographical indications shall not be registrable as trade marks, or, if registered, shall, subject to any rights in respect of a traditional term or expression acquired by any person prior to the commencement of the Intellectual Property Laws Amendment Act, 2013, and subject to the provisions of sections 3 and 70, be liable for removal from the register: 25
- (a) subject to sections 42 and 43, marks that consist exclusively of a sign or an indication which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, or other characteristics of the goods or services, or mode or time of production of the goods or of rendering of the services; or 30
 - (b) subject to section 43B(3), marks that consist exclusively of a traditional term or expression and which in the *bona fide* and established practices of the trade has become indicative of or is generally associated with the goods or services in respect of which the mark is sought to be registered. 35

National Database

- 43D.** (1) The National Database for Indigenous Knowledge contemplated in section 28C of the Copyright Act shall constitute and function as a sub-register within the register of trade marks in respect of traditional terms and expressions and geographical indications for purposes of this Act, in the manner provided for in the said section 28C of the Copyright Act. 45
- (2) Traditional terms and expressions or geographical indications—
- (a) contained in applications referred to the Council and accepted in terms of subsection (14); and 50
 - (b) contained in applications accepted in terms of sections 42, 43 or 43D, shall be recorded in the database.
- (3) For the purposes of this Act, an indigenous community is deemed to be a juristic person.
- (4) Any— 55
- (a) natural person who created the traditional terms and expressions or geographical indications;
 - (b) natural or juristic person authorised to act on behalf of an indigenous community, or on behalf of an individual; or

- (6) Geen reg ten opsigte van 'n afgeleide inheemse term of uitdrukking of kennis waarvoor die Wysigingswet op Intellektuele Eiendomsreg, 2013, voorsiening maak, is geskik vir registrasie nie tensy—
- (a) vooraf ingeligte instemming van die betrokke gesag of inheemse gemeenskap verkry is; 5
- (b) openbaarmaking van die inheemse kulturele uitdrukkings of kennis aan die Kommissie gedoen is; en
- (c) 'n voordeeldelingsooreenkoms tussen die aansoeker en die betrokke gesag of inheemse gemeenskap aangegaan is.
- (7) Indien 'n inheemse gemeenskap 'n gemeenskapsprotokol daargestel het, moet die interaksie met die inheemse gemeenskap in subartikel (6) beoog sodanige gemeenskapsprotokol in ag neem. 10
- (8) 'n Tradisionele term of uitdrukking of geografiese aanduiding is slegs registreerbaar ingevolge hierdie artikel indien—
- (a) die term of uitdrukking of geografiese aanduiding 'n afgeleide inheemse term of uitdrukking of geografiese aanduiding is en geskep is op of na die datum van inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, en die gemeenskap waaruit die term of uitdrukking, of 'n wesenlike deel daarvan, van oorsprong is, 'n inheemse gemeenskap is of was toe die term of uitdrukking geskep is; of 15
- (b) die tradisionele term of uitdrukking of geografiese aanduiding wat van 'n vorige generasie oorgelewer is. 20

Onregistreerbare tradisionele handelsmerke

- 43C.** (1) Die volgende tradisionele terme en uitdrukkings en geografiese aanduidings is nie registreerbaar as handelsmerke nie, of, indien geregistreer, is dit, behoudens enige regte ten opsigte van 'n tradisionele term of uitdrukking wat 'n persoon voor die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, bekom het, is onderhewig aan verwydering uit die register: 25
- (a) behoudens artikels 42 en 43, merke wat uitsluitlik bestaan uit 'n teken of aanduiding wat in die handel kan dien om die soort, kwaliteit, kwantiteit, voorgenome doel, waarde, of ander kenmerke van die goedere of dienste, of wyse of tyd van produksie van die goedere of lewering van die dienste aan te dui; of 30
- (b) behoudens artikel 43B(3), merke wat uitsluitlik uit 'n tradisionele term of uitdrukking bestaan en wat in die *bona fide* en gevestigde praktyke van die handel aanduidend geword het van, of algemeen geassosieer word met, die goedere of dienste ten opsigte waarvan die merk geregistreer staan te word. 35 40

Nasionale Databasis

- 43D.** (1) Die Nasionale Databasis vir Inheemse Kennis in artikel 28C van die Wet op Outeursreg beoog, is en funksioneer as 'n subregister binne die register van handelsmerke ten opsigte van tradisionele terme en uitdrukkings en geografiese aanduidings by die toepassing van hierdie Wet, op die wyse waarvoor in die genoemde artikel 28C van die Wet op Outeursreg voorsiening gemaak is. 45
- (2) Tradisionele terme en uitdrukkings of geografiese aanduidings—
- (a) vervat in aansoeke wat na die Raad verwys is en ingevolge subartikel (14) aanvaar is; en 50
- (b) vervat in aansoeke wat ingevolge artikels 42, 43 of 43D aanvaar is, word in die databasis opgeneem.
- (3) By die toepassing van hierdie Wet, word 'n inheemse gemeenskap geag 'n regspersoon te wees.
- (4) Enige— 55
- (a) natuurlike persoon wat die tradisionele terme en uitdrukkings of geografiese aanduidings geskep het;
- (b) natuurlike of regspersoon wat gemagtig is om namens 'n inheemse gemeenskap, of namens 'n individu, op te tree; of

- (c) person appointed by the Minister in the manner prescribed, to act on behalf of an indigenous community which is no longer in existence, may submit to the registrars of patents, copyright, trade marks and designs a request together with the appropriate information as prescribed for a traditional term or expression or geographical indication to be registered in the database, whereupon the provisions of the said section 28C of the Copyright Act shall, with necessary changes, apply. 5
- (5) The applicant for registration and the proprietor shall be—
- (a) where—
- (i) the originator of the traditional term or expression or the geographical indication cannot be determined; 10
 - (ii) the originator of the traditional term or expression or the geographical indication, is an indigenous community which is no longer in existence; or
 - (iii) the indigenous terms or expressions or geographical indication developed in such a manner that proprietorship cannot be shared amongst indigenous communities, 15
- the National Trust;
- (b) in all other instances related to indigenous terms or expressions, a person authorised to act on behalf of the indigenous community or indigenous communities or on behalf of an individual; 20
- (c) in all other instances related to geographical indications, a person authorised to act on behalf of the indigenous community or indigenous communities or the relevant member of the indigenous community; and 25
- (d) in all other instances related to derivative traditional terms or expressions, the relevant member of the indigenous community.
- (6) If the applicant for registration is an indigenous community, the request referred to in subsection (4) shall include a community protocol setting out relevant information about the community, including— 30
- (a) identification of the indigenous community and its acknowledged structure;
- (b) full details of the appointed representative of the indigenous community in whose name the traditional term or expression or the geographical indication must be registered; 35
- (c) if the representative is a juristic person, full details of registration of such juristic person;
- (d) the indigenous term or expression or geographical indication that is being registered and the justification for the community claiming rights to it; 40
- (e) whether such indigenous term or expression or geographical indication is sacred, or should for any other reason, which must be provided, be kept confidential; and
- (f) a written undertaking by the representative of the indigenous community to the effect that he or she will hold the right to the indigenous term or expression or geographical indication on behalf of the indigenous community. 45
- (7) The Council must assist the indigenous community to ensure that the community protocol corresponds with the structure of the indigenous community. 50
- (8) The community protocol must be kept with the registration of the indigenous term or expression or geographical indication.
- (9) Section 22(4) shall apply, with necessary changes, in relation to a database for traditional terms or expressions or geographical indications.
- (10) The Commission may determine which information recorded in the database must be treated confidentially: Provided that if the community protocol indicates that the information is sacred or must be kept in confidence, the Commission must treat the information confidentially. 55
- (11) Any person contemplated in subsection (4), or a third party who has an interest in a traditional term or expression or geographical indication may submit to the registrars of patents, copyright, trade marks and designs a request together with the appropriate information as prescribed, for the amendment or removal of a traditional term or expression or geographical indication in the database, whereupon the provisions of section 28C(13) of the Copyright Act shall, with necessary changes, apply. 60 65

- (c) persoon aangestel deur die Minister op die voorgeskrewe wyse, om namens 'n inheemse gemeenskap op te tree wat nie meer bestaan nie, kan aan die registrateurs van patente, outeursreg, handelsmerke en modelle 'n versoek voorlê tesame met die gepaste inligting soos voorgeskryf vir 'n tradisionele term of uitdrukking of geografiese aanduiding om in die databasis aangeteken te word, waarop die bepalings van die genoemde artikel 28C van die Wet op Outeursreg, met die nodige veranderings, van toepassing sal wees. 5
- (5) Die aansoeker om registrasie en die eienaar—
- (a) waar— 10
- (i) die skepper van die tradisionele term of uitdrukking of die geografiese aanduiding nie vasgestel kan word nie;
- (ii) die skepper van die tradisionele term of uitdrukking of die geografiese aanduiding 'n inheemse gemeenskap is wat nie meer bestaan nie; of 15
- (iii) die inheemse term of uitdrukking of geografiese aanduiding op so 'n wyse ontwikkel het dat eienaarskap nie tussen inheemse gemeenskappe gedeel kan word nie, is die Nasionale Trust;
- (b) in alle ander gevalle wat verband hou met inheemse terme of uitdrukkinge, 'n persoon wat gemagtig is om namens die inheemse gemeenskap of inheemse gemeenskappe of namens 'n individu op te tree; 20
- (c) in alle ander gevalle wat verband hou met geografiese aanduidings, 'n persoon gemagtig om namens die inheemse gemeenskap of inheemse gemeenskappe of die betrokke lid van die inheemse gemeenskap op te tree; en 25
- (d) in alle ander gevalle wat verband hou met afgeleide tradisionele terme of uitdrukkinge, die toepaslike lid van die inheemse gemeenskap.
- (6) Indien die aansoeker om registrasie 'n inheemse gemeenskap is, sluit die versoek in subartikel (4) bedoel 'n gemeenskapsprotokol in wat toepaslike inligting oor die gemeenskap uiteensit, met inbegrip van— 30
- (a) identifikasie van die inheemse gemeenskap en sy erkende struktuur;
- (b) volle besonderhede van die aangestelde verteenwoordiger van die inheemse gemeenskap in wie se naam die tradisionele term of uitdrukking of die geografiese aanduiding geregistreer moet word; 35
- (c) indien die verteenwoordiger 'n regspersoon is, die volledige besonderhede van registrasie van sodanige regspersoon;
- (d) die inheemse handelsmerk wat geregistreer word en die regverdiging vir die gemeenskap om aanspraak daarop te maak; 40
- (e) of sodanige inheemse handelsmerk gewyd is, of om enige ander rede, wat voorgelê moet word, vertroulik gehou moet word; en
- (f) 'n geskrewe onderneming deur die verteenwoordiger van die inheemse gemeenskap dat hy of sy die reg op die inheemse term of uitdrukking of geografiese aanduiding namens die inheemse gemeenskap sal hou. 45
- (7) Die Raad moet die inheemse gemeenskap help om te verseker dat die gemeenskapsprotokol met die struktuur van die inheemse gemeenskap ooreenstem.
- (8) Die gemeenskapsprotokol moet saam met die registrasie van die inheemse term of uitdrukking of geografiese aanduidings gehou word. 50
- (9) Artikel 22(4) geld, met die nodige veranderinge, ten opsigte van 'n databasis vir tradisionele terme of uitdrukkinge of geografiese aanduidings.
- (10) Die Kommissie kan bepaal watter inligting in die databasis opgeneem as vertroulik hanteer moet word: Met dien verstande dat indien die gemeenskapsprotokol aandui dat die inligting gewyd is of vertroulik is, die Kommissie die inligting vertroulik moet hanteer. 55
- (11) 'n Persoon in subartikel (4) bedoel, of 'n derde party wat 'n belang in 'n tradisionele term of uitdrukking of geografiese aanduiding het, kan 'n versoek, vergesel van die gepaste inligting soos voorgeskryf, aan die registrateurs van patente, outeursreg, handelsmerke en modelle voorlê vir die wysiging of verwydering van 'n tradisionele term of uitdrukking of geografiese aanduiding in die databasis, waarby die bepalings van artikel 60

- (12) If it appears to the registrars of patents, copyright, trade marks and designs that the mark sought to be registered—
- (a) consists exclusively of, or an essential part thereof constitutes, a traditional term or expression or geographical indication as contemplated in section 43B; and
 - (b) is registrable in terms of section 42, 43 or 43B,
- the registrars of patents, copyright, trade marks and designs shall accordingly register the mark.
- (13) Save for as otherwise provided in this section, parts IV and V specifically shall apply, with necessary changes, in relation to the registration of a traditional term or expression.
- (14) (a) If it appears to the registrars of patents, copyright, trade marks and designs that the mark sought to be registered—
- (i) consists exclusively of, or an essential part thereof constitutes, a traditional term or expression or geographical indication as contemplated in section 43B; and
 - (ii) is not registrable in terms of section 42, 43 or 43B,
- he or she shall provisionally refuse the application and refer the application to the Council for its advice.
- (b) The Council shall consider such application and advise the registrars of patents, copyright, trade marks and designs within three months of receipt of the referral whether or not, in its opinion, the mark can be registered.
- (c) Upon receipt of the advice of the Council, the registrars of patents, copyright, trade marks and designs shall accept or refuse the application.
- (15) The registrars of patents, copyright, trade marks and designs shall advise an applicant for registration in writing, within a reasonable period from the date of the application, of his or her decision in terms of this section.
- (16) In the case of—
- (a) an acceptance in terms of subsections (2), (12) or (14)(c);
 - (b) a refusal in terms of subsection (14)(c); or
 - (c) a provisional refusal or refusal in terms of subsection (14)(a),
- the registrars of patents, copyright, trade marks and designs shall, on application by the applicant in the prescribed manner, state in writing the grounds for his or her decision.
- (17) (a) In the case of an acceptance of a traditional term or expression or geographical indication for registration as a certification trade mark or a collective trade mark, the registrars of patents, copyright, trade marks and designs shall notify the Council accordingly and in the prescribed manner.
- (b) In the case of an acceptance of a geographical indication as—
- (i) a certification trade mark in terms of section 42; or
 - (ii) a collective trade mark in terms of section 43,
- the registrars of patents, copyright, trade marks and designs shall notify the Director-General of the department responsible for Agriculture in the prescribed manner.
- (18) Section 27(1)(a) and (b) does not apply to a traditional term, expression or geographical indication.

Term of protection

- 43E.** (1) Save for as otherwise provided in this section, section 37 shall apply, with necessary changes, in relation to the duration and renewal of registration of derivative traditional terms or expressions and geographical indications as set out in section 43B(8)(a).
- (2) The duration of registration in the case of indigenous term or expression or geographical indication as set out in section 43B(8)(b) shall be in perpetuity.

28C(13) van die Wet op Outeursreg, met die nodige veranderinge, van toepassing is.

(12) Indien dit vir die registrateurs van patente, outeursreg, handelsmerke en modelle voorkom asof die merk wat geregistreer staan te word—

(a) uitsluitlik bestaan uit, of 'n essensiële deel daarvan bestaan uit, 'n tradisionele term of uitdrukking of geografiese aanduiding soos beoog in artikel 43B; en

(b) ingevolge artikel 42, 43 of 43B geregistreer kan word, moet die registrateurs van patente, outeursreg, handelsmerke en modelle die merk ooreenkomstig registreer.

(13) Buiten waar daar in hierdie artikel anders bepaal word, is dele IV en V spesifiek van toepassing, met die nodige veranderinge, ten opsigte van 'n registrasie van 'n tradisionele term of uitdrukking.

(14) (a) Indien dit vir die registrateurs van patente, outeursreg, handelsmerke en modelle voorkom asof die merk wat geregistreer staan te word—

(i) uitsluitlik bestaan uit, of 'n essensiële deel uitmaak van, 'n tradisionele term of uitdrukking of geografiese aanduiding soos beoog in artikel 43B; en

(ii) nie ingevolge artikel 42, 43 of 43B geregistreer kan word nie, moet hy of sy die aansoek voorlopig weier en die aansoek na die Raad verwys vir advies.

(b) Die Raad moet sodanige aansoek oorweeg en die registrateurs van patente, outeursreg, handelsmerke en modelle van raad bedien binne drie maande van ontvangs van die verwysing adviseer oor of die merk, na sy mening, geregistreer kan word al dan nie.

(c) By ontvangs van die raad van die Raad, moet die registrateurs van patente, outeursreg, handelsmerke en modelle die aansoek aanvaar of weier.

(15) Die registrateurs van patente, outeursreg, handelsmerke en modelle sal 'n aansoeker om registrasie binne 'n redelike tydperk vanaf die datum van die aansoek skriftelik inlig oor sy of haar besluit ingevolge hierdie artikel.

(16) In die geval van—

(a) 'n aanvaarding ingevolge subartikels (2), (12) of (14)(c);

(b) 'n weiering ingevolge subartikel (14)(c); of

(c) 'n voorwaardelike weiering of weiering ingevolge subartikel (14)(a), moet die registrateurs van patente, outeursreg, handelsmerke en modelle by aansoek deur die aansoeker op die voorgeskrewe wyse, die gronde vir sy of haar besluit op skrif stel.

(17) (a) In die geval van 'n aanvaarding van 'n tradisionele term of uitdrukking of geografiese aanduiding vir registrasie as 'n sertifiseringshandelsmerk of 'n versamelhandelsmerk moet die registrateurs van patente, outeursreg, handelsmerke en modelle die Raad op die voorgeskrewe wyse in kennis stel.

(b) In die geval van 'n aanvaarding van 'n geografiese aanduiding as—

(i) 'n sertifiseringshandelsmerk ingevolge artikel 42; of

(ii) 'n versamelhandelsmerk ingevolge artikel 43, moet die registrateurs van patente, outeursreg, handelsmerke en modelle die Direkteur-generaal van die departement verantwoordelik vir landbou op die voorgeskrewe wyse in kennis stel.

(18) Artikels 27(1)(a) en (b) is nie van toepassing op 'n tradisionele term, uitdrukking of geografiese aanduiding nie.

Termyn van beskerming

43E. (1) Buiten soos anders bepaal in hierdie artikel, is artikel 37 van toepassing, met die nodige veranderinge, in verband met die duur en hernuwing van registrasie van afgeleide tradisionele terme of uitdrukkinge en geografiese aanduidings soos in artikel 43B(8)(a) uiteengesit.

(2) Die duur van registrasie in die geval van inheemse terme of uitdrukkinge of geografiese aanduidings soos in artikel 43B(8)(b) is onbepaald.

Infringement of traditional mark, exceptions, licence fees and benefits

43F. (1) Notwithstanding the provisions of section 34(1), the proprietor of a trade mark in respect of a traditional term or expression shall not be entitled to interfere with or restrain a person referred to in section 35 or a person who commenced using a mark in the course of trade in the manner contemplated in section 34(1) at a date prior to the commencement of the Intellectual Property Laws Amendment Act, 2013, and has continued to make *bona fide* use of such mark: Provided that if any commercial benefit is derived from any such use after the date of registration of the traditional term or expression or geographical indication in terms of section 43D, a licence fee, a benefit, or both such licence fee and benefit, shall be paid by such person to the proprietor as provided for in subsection (4).

(2) Any person who has acquired rights as contemplated in subsection (1) must comply with section 43B(6)(b) and (c), within 12 months after the commencement of the Intellectual Property Laws Amendment Act, 2013: Provided that—

- (a) the rights of the indigenous community to licence fees or benefits or both such licence fees and benefits shall start on the commencement of the Intellectual Property Laws Amendment Act, 2013; and
- (b) save for the obligations contemplated in this subsection and subsection (1), such person shall continue to hold his or her right in the manner he or she has done prior to the commencement of the Intellectual Property Laws Amendment Act, 2013.

(3) Any person who intends to acquire rights pertaining to use of the indigenous term or expression or geographical indication after the commencement of the Intellectual Property Laws Amendment Act, 2013, must comply with section 43B(6).

(4) The amount or value of the licence fee, benefit, or to both such licence fee and benefit, contemplated in subsection (1) or negotiated for in the benefit sharing agreement contemplated in subsection (3), shall be determined—

- (a) by agreement between the person who is the user of the mark and the owner of the mark;
- (b) by one or more collecting societies representing either or both of these parties; or
- (c) in the absence of agreement as contemplated in paragraph (a) or (b) being reached, the amount or value of the licence fee, benefit, or both such licence fee and benefit, by—
 - (i) an institution accredited by the Commission as contemplated in section 43I(1); or
 - (ii) arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965);

Provided that if the persons referred to in subsection (4)(a) or (b) cannot agree on which referral to follow in terms of this subsection within a reasonable period, any of the persons may refer these disputes for resolution in terms of section 43I.

(5) Agreements concluded in terms of subsections (2), (3) or (4)(a) or (b) must be submitted to the Council, who shall—

- (a) scrutinise the agreement for compliance with intellectual property laws, including this Act and the community protocol; and
- (b) where any clause within the contract is regarded as not being to the benefit of the indigenous community or member of the indigenous community concerned, require renegotiation of said clause and provide the necessary advice.

(6) The owner of a certification or collective trade mark in a derivative indigenous term or expression or geographical indication shall pay a licence fee or benefit, agreed to as set out in this section, to the owner or owners of certification or collective trade marks in the indigenous term or

Skending van tradisionele merk, uitsonderings, lisensiegeld en voordele

- 43F.** (1) Ondanks die bepalings van artikel 34(1) is die eienaar van 'n handelsmerk ten opsigte van 'n tradisionele term of uitdrukking nie daarop geregtig om in te meng nie met 'n persoon in artikel 35 bedoel of 'n persoon wat begin het om 'n merk op die wyse in artikel 34(1) beoog te gebruik op 'n datum voor die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, en voortgegaan het om *bona fide* gebruik van sodanige merk te maak, of om sodanig persoon te belet nie: Met dien verstande dat indien enige kommersiële voordeel uit sodanige gebruik verkry word na die datum van registrasie van die handelsmerk ingevolge artikel 43D, lisensiegeld, 'n voordeel, of beide sodanige lisensiegeld en voordeel, deur sodanige persoon aan die eienaar betaal moet word soos in subartikel (4) bepaal. 5 10
- (2) 'n Persoon wat regte soos beoog in subartikel (1) bekom het moet binne 12 maande na die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, aan artikel 43B(6)(b) en (c) voldoen: Met dien verstande dat— 15
- (a) die aanspraak van die inheemse gemeenskap op lisensiegeld of voordele of beide sodanige lisensiegeld en voordele by die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, sal begin; en 20
- (b) behalwe vir die verpligtinge in hierdie artikel en subartikel (1) beoog, sodanige persoon sy of haar reg behou op dieselfde wyse as voor die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013. 25
- (3) 'n Persoon wat beoog om regte rakende die gebruik van die inheemse term of uitdrukking of geografiese aanduiding te verkry na die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, moet aan artikel 43B(6) voldoen. 30
- (4) Die bedrag of waarde van die lisensiegeld, voordeel of beide sodanige tantième en voordeel, in subartikel (1) beoog of voor onderhandel in die voordeeldelingsooreenkoms in subartikel (3) beoog, word bepaal—
- (a) by ooreenkoms tussen die persoon wat die gebruiker van die merk is en die eienaar van die merk; 35
- (b) deur een of meer insamelingsverenigings wat een of beide van hierdie partye verteenwoordig; of
- (c) by ontstentenis aan die bereik van 'n ooreenkoms soos beoog in paragraaf (a) of (b), die bedrag of waarde van die lisensiegeld, voordeel, of beide sodanige lisensiegeld en voordeel, bepaal deur— 40
- (i) 'n instelling deur die Kommissie geakkrediteer soos in artikel 43I(1) beoog; of
- (ii) arbitrasie ingevolge die Wet op Arbitrasie, 1965 (Wet No. 42 van 1965):
- Met dien verstande dat indien die persone in subartikels (4)(a) of (b) bedoel nie binne 'n redelike tydperk kan ooreenkom op watter verwysing om ingevolge hierdie subartikel te volg nie, enige van die persone hierdie geskille kan verwys vir oplossing ingevolge artikel 43I. 45
- (5) Ooreenkomste ingevolge subartikels (2), (3) of (4)(a) of (b) aangegaan moet aan die Raad voorgelê word, wat— 50
- (a) die ooreenkoms moet nagaan vir nakoming van intellektuele eiendomsvette, met inbegrip van hierdie Wet en die gemeenskapsprotokol; en
- (b) waar enige klousule in die kontrak geag word nie tot voordeel van die betrokke inheemse gemeenskap of lid van die inheemse gemeenskap te wees nie, heronderhandeling van die genoemde klousule vereis en die nodige raad voorsien. 55
- (6) Die eienaar van 'n sertifiseringshandelsmerk of versamelhandelsmerk in 'n afgeleide inheemse term of uitdrukking of geografiese aanduiding moet 'n lisensiegeld of voordeel betaal, op ooreengekom soos in hierdie artikel uiteengesit, aan die eienaar of eienaars van die sertifiserings- of versamelhandelsmerke in die inheemse term of 60

expression or geographical indication from which the derivative indigenous term or expression or geographical indication was derived.

(7) Any person deriving commercial benefit from the use of a traditional term or expression or geographical indication, which commercial benefit is less than the prescribed value shall be excluded from the requirements of sections 43B(6), 43F(2) and (3) and from the requirement to pay licence fees and benefits as contemplated in section 43F(1).

(8) A traditional term or expression or geographical indication may be used without obtaining prior consent of the trade mark proprietor, if it is for the purpose of—

- (a) private study or private use;
- (b) professional criticism or review;
- (c) reporting on current events;
- (d) education;
- (e) scientific research;
- (f) legal proceedings; or
- (g) the making of recordings and other reproductions of indigenous cultural expressions or knowledge for purposes of their inclusion in an archive, inventory, dissemination for non-commercial cultural heritage safeguarding purposes and incidental uses: Provided that only such portions as is reasonably required for such use are made and that the trade mark owner's name is acknowledged.

National Trust and Fund for Indigenous Knowledge

43G. (1) The National Trust and the Fund, as the case may be, shall constitute and function as a National Trust and Fund in respect of traditional terms and expressions and geographical indications for purposes of this Act, and the provisions of section 28I of the Copyright Act shall, with necessary changes, apply.

(2) All monies payable in respect of the use of an indigenous term or expression or geographical indication registered under this Act and owned by the National Trust shall be paid into the Fund contemplated in subsection (1) and shall be applied for the benefit of indigenous communities in the manner prescribed in section 28I of the Copyright Act.

Assignment and licences

43H. (1) Save for—

- (a) assignment of an indigenous term or expression or geographical indication to a collecting society, or
 - (b) transfer to a duly appointed representative of the community,
- the certification or collective trade marks in an indigenous term or expression or geographical indication shall not be transmissible by assignment, testamentary disposition or operation of law, but the doing of any act may be licensed.

(2) Should the certification or collective trade mark referred to in subsection (1) vest in a representative of an indigenous community, the indigenous community may—

- (a) upon the death or liquidation of the said representative, as the case may be; or
- (b) prior to the death or liquidation of the said representative, by agreement as set out in the community protocol, transfer such certification or collective trade mark to a person, as the indigenous community may decide.

(3) Should the certification or collective trade mark referred to in subsection (1), vest in a representative of an indigenous community, such certification or collective trade mark shall automatically upon the death of the last living member of such indigenous community transfer to the National Trust.

uitdrukking of geografiese aanduiding waarvan die afgeleide inheemse term of uitdrukking of geografiese aanduiding afgelei is.

(7) 'n Persoon wat kommersiële voordeel trek uit die gebruik van 'n tradisionele term of uitdrukking of geografiese aanduiding, welke kommersiële voordeel minder is as die voorgeskrewe waarde, word uitgesluit van die vereistes van artikels 43B(6), 43F(2) en (3) en van die vereiste om lisensiegeld en voordele soos in artikel 43F(1) beoog te betaal.

(8) 'n Tradisionele term of uitdrukking of geografiese aanduiding kan gebruik word sonder om vooraf instemming van die handelsmerkeienaar te verkry, indien dit vir die doel is van—

- (a) privaatstudie of privaatgebruik;
- (b) professionele kritiek of resensie;
- (c) verslagdoening oor aktuele gebeure;
- (d) onderwys;
- (e) wetenskaplike navorsing;
- (f) geregtelike verrigtinge; of
- (g) die maak van opnames en ander reproduksies van inheemse kulturele uitdrukkings of kennis ten einde dit in 'n argief of inventaris in te sluit, dit te versprei vir niekommersiële kulturele beskermingsdoeleindes en toevallige gebruike: Met dien verstande dat slegs sodanige dele wat redelikerwys vereis word vir sodanige gebruik gemaak word en dat die handelsmerkeienaar se naam erken word.

Nasionale Trust en Fonds vir Inheemse Kennis

43G. (1) Die Nasionale Trust en die Fonds, na gelang van die geval, maak 'n Nasionale Trust en Fonds uit en funksioneer as sodanig ten opsigte van tradisionele terme en uitdrukkings en geografiese aanduidings vir die doeleindes van hierdie Wet, en die bepalings van die genoemde artikel 28I is, met die nodige veranderinge, van toepassing.

(2) Alle gelde betaalbaar ten opsigte van die gebruik van 'n inheemse term of uitdrukking of geografiese aanduiding wat ingevolge hierdie Wet geregistreer is en deur die Nasionale Trust besit word, word in die Fonds in subartikel (1) beoog inbetaal en word tot voordeel van die inheemse gemeenskappe toegepas op die wyse in artikel 28I van die Wet op Outeursreg voorgeskryf.

Sessie en lisensies

43H. (1) Behalwe in die geval van—

- (a) sessie van 'n inheemse term of uitdrukking of geografiese aanduiding aan 'n insamelingsvereniging; of
 - (b) oordrag na 'n behoorlik aangestelde verteenwoordiger van die gemeenskap,
- is die sertifisering van versamelhandelsmerke in 'n inheemse term of uitdrukking of geografiese aanduiding nie oordraagbaar deur sessie, testamentêre beskikking of wetswerking nie, maar die verrigting van enige handeling kan gelisensieer word.

(2) Sou die sertifiserings- of versamelhandelsmerk in subartikel (1) bedoel, in die verteenwoordiger van 'n inheemse gemeenskap vestig, kan die inheemse gemeenskap—

- (a) by die dood of likwidasië van die verteenwoordiger, na gelang van die geval; of
 - (b) voor die dood of likwidasië van sodanige verteenwoordiger,
- by ooreenkoms soos uiteengesit in die gemeenskapsprotokol, sodanige sertifiserings- of versamelhandelsmerk oordra na 'n persoon waarop die inheemse gemeenskap kan besluit.

(3) Sou die sertifiserings- of versamelhandelsmerk in subartikel (1) bedoel in 'n verteenwoordiger van 'n inheemse gemeenskap vestig, word sodanige sertifiserings- of versamelhandelsmerk outomaties na die Nasionale Trust oorgedra.

Disputes

43I. (1) The Commission must accredit certain institutions which have the necessary capacity, to adjudicate any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013.

(2) Any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013, must first be instituted in an institution accredited as contemplated in subsection (1).

(3) No person appearing in proceedings before an institution contemplated in subsection (1) shall have the right to legal representation unless—

(a) the adjudicator and all other parties consent; or

(b) the adjudicator, after considering—

(i) the nature of the questions of law raised by the dispute;

(ii) the relative complexity and importance of the dispute; and

(iii) the comparative ability of the parties to represent themselves in the adjudication,

concludes that it would be unreasonable to expect a party to deal with the adjudication without legal representation.

(4) Any adjudication must take into account existing customary dispute resolution mechanisms.

(5) The decision of the institution referred to in subsection (1) may be served, executed and enforced as if it was an order of the High Court.

(6) Any party to proceedings before an institution referred to in subsection (1) may appeal to a court of law against any decision of such institution, and the appeal must be noted and dealt with in the manner prescribed by law for appeals against a civil order or decision of a single judge.

(7) The Minister shall prescribe the fees, processes and formalities relating to the institution and adjudication of a dispute.

National Council

43J. The Council must advise the registrars of patents, copyright, trade marks and designs on the registration of traditional terms and expressions under this Act.

Compliance with international agreements

43K. (1) The Minister may by notice in the *Gazette* provide that any provision of this Act specified in such notice shall in the case of any country so specified apply so that—

(a) a community recognised in the specified country as an indigenous community shall be deemed to be an indigenous community as defined in this Act; and

(b) traditional terms and expressions and geographical indications recognised in the specified country as traditional terms and expressions and geographical indications shall be deemed to be traditional terms and expressions and geographical indications as defined in this Act.

(2) The Minister may in the notice in subsection (1) make the provisions of this Act applicable, in respect of a country listed in the notice—

(a) to its citizens or subjects;

(b) to persons who at material times are domiciled or resident in the listed country and who are members of an indigenous community in that country; and

(c) to juristic persons incorporated under the laws of the specified country and representing indigenous communities of that country.

(3) The notice referred to in subsection (1) may—

(a) include exceptions or modifications to the application of the Act in respect of a specified country;

(b) provide for general application of the Act; or

(c) limit application of the Act to such types of traditional terms and expressions and geographical indications as may be specified.

Geskille

- 43I.** (1) Die Kommissie moet sekere instellings akkrediteer wat die nodige kapasiteit het om enige geskil te bereg wat ontstaan uit die toepassing van die Wysigingswet op Intellektuele Eiendomsreg, 2013.
- (2) 'n Geskil wat ontstaan uit die toepassing van die Wysigingswet op Intellektuele Eiendomsreg, 2013, moet eers in 'n instelling ingestel word wat soos in subartikel (1) beoog geakkrediteer is. 5
- (3) Geen persoon wat in verrigtinge voor 'n instelling in subartikel (1) beoog verskyn het die reg op regsverteenvoording nie tensy—
- (a) die beregter en alle ander partye instem; of 10
- (b) die beregter, na oorweging van—
- (i) die aard van die regsrae wat uit die geskil na vore kom;
- (ii) die relatiewe ingewikkeldheid en gewig van die geskil; en
- (iii) die betreklike vermoë van die partye om hulself in die beregting te verteenwoordig, 15
- tot die slotsom kom dat dit onredelik sal wees om van 'n party te verwag om die beregting sonder regsverteenvoording te hanteer.
- (4) Enige beregting moet bestaande gewoonte-geskilbeslegtings-meganismes in ag neem.
- (5) Die beslissing van die instelling in subartikel (1) bedoel, kan beteken, uitgevoer en toegepas word asof dit 'n bevel van die Hooggeregshof was. 20
- (6) 'n Party in verrigtinge voor 'n instelling in subartikel (1) bedoel, kan by 'n geregshof appèl aanteken teen enige beslissing van sodanige instelling, en die appèl moet aangeteken en hanteer word op die wyse deur die wet voorgeskryf vir appèlle teen 'n siviele bevel of besluit van 'n enkele regter. 25
- (7) Die Minister skryf die gelde, prosesse en formaliteite voor in verband met die instelling en beregting van 'n geskil.

Nasionale Raad

- 43J.** Die Raad moet die registreurs van patente, outeursreg, handelsmerke en modelle van raad bedien oor die registrasie van tradisionele terme en uitdrukkings kragtens hierdie Wet. 30

Nakoming van internasionale ooreenkomste

- 43K.** (1) Die Minister kan by kennisgewing in die *Staatskoerant* bepaal dat enige bepaling van hierdie Wet in sodanige kennisgewing vermeld in die geval van 'n land aldus vermeld van toepassing is sodat— 35
- (a) 'n gemeenskap wat in die vermelde land erken word as 'n inheemse gemeenskap, geag word 'n inheemse gemeenskap te wees soos in hierdie Wet omskryf; en
- (b) tradisionele terme en uitdrukkings en geografiese aanduidings wat in die vermelde land erken word as tradisionele terme en uitdrukkings en geografiese aanduidings geag word tradisionele terme en uitdrukkings en geografiese aanduidings te wees soos in hierdie Wet omskryf. 40
- (2) Die Minister kan in die kennisgewing in artikel (1) die bepalinge van hierdie Wet van toepassing maak, ten opsigte van 'n land in die kennisgewing genoem, op— 45
- (a) sy burgers of onderdane;
- (b) persone wat op wesenlike tye in die genoemde land woon of woonagtig is en wat lede van 'n inheemse gemeenskap in daardie land is; en 50
- (c) regspersone ingelyf kragtens die wette van die vermelde land en wat inheemse gemeenskappe van daardie land verteenwoordig.
- (3) Die kennisgewing in artikel (1) bedoel kan—
- (a) uitsonderings of veranderings aan die toepassing van die Wet ten opsigte van 'n vermelde land insluit; 55
- (b) vir 'n algemene toepassing van die Wet voorsiening maak; of
- (c) toepassing van die Wet beperk tot sodanige soorte tradisionele terme en uitdrukkings en geografiese aanduidings soos bepaal kan word.

(4) No notice shall be issued under this section in respect of any country which is not a party to a convention relating to trade marks to which the Republic is also a party, unless the Minister is satisfied that, in respect of the class of traditional terms and expressions and geographical indications to which the notice relates, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of traditional trade marks under this Act.

(5) Section 35 shall, with the necessary changes required by the context, apply in respect of traditional terms or expressions.”.

Amendment of section 69 of Act 194 of 1993

10. Section 69 of the Trade Marks Act, 1993 (Act No. 194 of 1993), is hereby amended by the addition after subsection (3) of the following subsections:

“(4) The Minister may make regulations providing for the fees, processes and formalities related to the submission and adjudication of a dispute set out in section 43I.

(5) The Minister may make regulations in consultation with the Minister of Finance, providing for the establishment, composition, funding and functions of collecting societies contemplated in section 43F, and any other matter that it may be necessary or expedient to regulate for the proper functioning of such societies.

(6) The Minister may make regulations providing for the appointment of a person to act on behalf of an indigenous community which is no longer in existence.

(7) The Minister may prescribe the value of a commercial benefit contemplated in section 43F(7).

(8) The Minister may issue guidelines on any aspect of the Intellectual Property Laws Amendment Act, 2013, including—

- (a) protection of traditional terms and expressions and geographical indications;
- (b) examples and other measures to identify traditional terms and expressions and geographical indications;
- (c) the database, in so far as it relates to traditional terms and expressions and geographical indications;
- (d) the National Trust and Fund, in so far as it relates to traditional terms and expressions and geographical indications;
- (e) the Council, in so far as it relates to traditional terms and expressions and geographical indications; and
- (f) the dispute process as set out in section 43I.”.

Amendment of section 1 of Act 195 of 1993, as amended by section 69 of Act 38 of 1997

11. Section 1 of the Designs Act, 1993 (Act No. 195 of 1993), is hereby amended—

- (a) by the insertion in subsection (1) after the definition of “cessionary” of the following definitions:

“**‘collecting society’** means a collecting society created by the Copyright Act, this Act, or by agreement and which amongst others—

- (a) manages matters related to rights in designs;
- (b) negotiates for and collects royalties and benefits on behalf of its members; and
- (c) distributes royalties and benefits to design owners;

‘community protocol’ means a protocol developed by an indigenous community that describes the structure of the indigenous community and its claims to indigenous cultural expressions or knowledge and indigenous designs, and provides procedures for prospective users of such indigenous cultural expressions or knowledge or indigenous designs, to

- (4) Geen kennisgewing sal kragtens hierdie artikel uitgereik word ten opsigte van enige land wat nie 'n party is tot 'n konvensie oor handelsmerke waartoe die Republiek ook 'n party is nie, tensy die Minister tevrede is dat, ten opsigte van die klas van tradisionele terme en uitdrukkings en geografiese aanduidings waarmee die kennisgewing verband hou, voorsiening gemaak is of sal word kragtens die wette van daardie land waarby voldoende beskerming aan die eienaars van tradisionele handelsmerke kragtens hierdie Wet verleen sal word. 5
- (5) Artikel 35, met die nodige veranderings deur die samehang vereis, is van toepassing ten opsigte van tradisionele terme of uitdrukkings.”. 10

Wysiging van artikel 69 van Wet 194 van 1993

10. Artikel 69 van die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), word hierby gewysig deur die volgende subartikels na subartikel (3) by te voeg:

- “(4) Die Minister kan regulasies uitvaardig wat voorsiening maak vir die gelde, prosesse en formaliteite betreffende die voorlegging en beregting van 'n geskil in artikel 43I uiteengesit. 15
- (5) Die Minister kan regulasies uitvaardig in oorleg met die Minister van Finansies, wat voorsiening maak vir die instelling, samestelling, befondsing en werksaamhede van insamelingsverenigings in artikel 43F bedoel, en enige ander aangeleentheid ten opsigte waarvan regulering van die behoorlike funksionering van sodanige gemeenskappe nodig of aangewese is. 20
- (6) Die Minister kan regulasies uitvaardig wat voorsiening maak vir die aanstelling van 'n persoon om namens 'n inheemse gemeenskap wat nie meer bestaan nie op te tree.
- (7) Die Minister kan die waarde van 'n kommersiële voordeel in artikel 43F(7) beoog voorskryf. 25
- (8) Die Minister kan riglyne uitreik oor enige aspek van die Wysigingswet op Intellektuele Eendomsreg, 2013, met inbegrip van—
- (a) beskerming van tradisionele terme en uitdrukkings en geografiese aanduidings; 30
- (b) voorbeelde en ander maatreëls om tradisionele terme en uitdrukkings en geografiese aanduidings te identifiseer;
- (c) die databasis, vir sover dit met tradisionele terme en uitdrukkings en geografiese aanduidings verband hou;
- (d) die Nasionale Trust en Fonds, vir sover dit met tradisionele terme en uitdrukkings en geografiese aanduidings verband hou; 35
- (e) die Raad, vir sover dit met tradisionele terme en uitdrukkings en geografiese aanduidings verband hou; of
- (f) die geskilproses soos in artikel 43I uiteengesit.”.

Wysiging van artikel 1 van Wet 195 van 1993, soos gewysig deur artikel 69 van Wet 38 van 1997 40

11. Artikel 1 van die Wet op Modelle, 1993 (Wet No. 195 van 1993), word hierby gewysig—

- (a) deur in subartikel (1) na die omskrywing van “aansoeker” die volgende omskrywing in te voeg: 45
- “**‘afgeleide inheemse model’** enige estetiese of funksionele model wat die onderwerp van hierdie Wet uitmaak, toegepas op enige vorm van inheemse model wat deur 'n inheemse gemeenskap erken word as dat dit 'n inheemse of tradisionele oorsprong het, en 'n wesenlike deel waarvan afgelei is van inheemse kulturele uitdrukkings of kennis ongeag of sodanige afgeleide inheemse ontwerp afgelei is voor of na die inwerkingtrede van die Wysigingswet op Intellektuele Eendomsreg, 2013: Met dien verstande dat— 50
- (a) 'n estetiese afgeleide inheemse model as “TA” geregistreer word en verwys na 'n afgeleide inheemse model aangewend op 'n inheemse model vir die patroon of vorm of die konfigurasie of die ornamentasie daarvan, of vir twee of meer van daardie doeleindes, en op watter wyse dit ook al aangewend word, met kenmerke wat 55

- seek the community's prior informed consent, negotiate mutually agreed terms and benefit-sharing agreements;";
- (b) by the insertion in subsection (1) after the definition of "convention country" of the following definitions:
- " **'Copyright Act'** means the Copyright Act, 1978 (Act No. 98 of 1978);
'Council' means the National Council for Indigenous Knowledge as defined in section 1 of the Copyright Act;";
- (c) by the insertion in subsection (1) after the definition of "court" of the following definition:
- " **'database'** means the relevant section of the National Database for Indigenous Knowledge as defined in section 1 of the Copyright Act;";
- (d) by the insertion in subsection (1) after the definition of "date of application" of the following definition:
- " **'derivative indigenous design'** means any aesthetic or functional design forming the subject of this Act, applied to any form of indigenous design recognised by an indigenous community as having an indigenous or traditional origin, and a substantial part of which was derived from indigenous cultural expressions or knowledge irrespective of whether such derivative indigenous design was derived before or after the commencement of the Intellectual Property Laws Amendment Act, 2013: Provided that—
- (a) an aesthetic derivative indigenous design shall be registered as "TA" and refers to a derivative indigenous design applied to an indigenous design for the pattern or the shape or the configuration or the ornamentation thereof, or for two or more of those purposes, and by whatever means it is applied, having features which appeal to and are judged solely by the eye, irrespective of the aesthetic quality thereof; and
- (b) a functional derivative indigenous design shall be registered as "TF" and refers to a derivative indigenous design applied to an indigenous design for the pattern or the shape or the configuration thereof, or for two or more of those purposes, and by whatever means it is applied, having features which are necessitated by the function which the indigenous design to which the derivative indigenous design is applied, is to perform;";
- (e) by the substitution for the definition of "design" of the following definition:
- " **'design'** means an aesthetic design [or], a functional design or a traditional design;";
- (f) by the insertion in subsection (1) after the definition of "functional design" of the following definitions:
- " **'Fund'** means the National Trust Fund for Indigenous Knowledge as defined in section 1 of the Copyright Act;
'indigenous community' means any recognisable community of people originated in or historically settled in a geographic area or areas located within the borders of the Republic, as such borders existed at the date of commencement of the Intellectual Property Laws Amendment Act, 2013, characterised by social, cultural and economic conditions which distinguish them from other sections of the national community, and who identify themselves and are recognised by other groups as a distinct collective;
'indigenous cultural expressions or knowledge' means any form, tangible or intangible, or a combination thereof, in which traditional culture and knowledge are embodied, passed on between generations, tangible or intangible forms of creativity of indigenous communities, including, but not limited to—
- (a) phonetic or verbal expressions, such as stories, epics, legends, poetry, riddles and other narratives, words, signs, names and symbols;
- (b) musical or sound expressions, such as songs, rhythms and instrumental music, the sounds which are the expression of rituals;

- die oog opval en deur die blote oog beoordeel word, ongeag die estetiese kwaliteit daarvan; en
- (b) 'n funksionele afgeleide inheemse model as “TF” geregistreer word en verwys na 'n afgeleide inheemse model aangewend op 'n inheemse model vir die patroon of die konfigurasie daarvan, of vir twee of meer van daardie doeleindes, en op watter wyse dit ook al aangewend word, met kenmerke wat nodig gemaak word deur die funksie wat die inheemse model waarop die afgeleide inheemse model aangewend is, moet verrig;”;
- (b) deur in subartikel (1) na die omskrywing van “artikel” die volgende omskrywing in te voeg:
- “**‘databasis’** die toepaslike afdeling van die Nasionale Databasis vir Inheemse Kennis soos in artikel 1 van die Wet op Outeursreg omskryf;”;
- (c) deur in die omskrywing van “eienaar” die volgende paragrafe na paragraaf (d) in te voeg:
- “(e) waar die model 'n tradisionele model is en—
- (i) nie vasgestel kan word wie die outeur van die model was nie;
- (ii) die outeur van die model 'n inheemse gemeenskap is wat nie meer bestaan nie; of
- (iii) die model nie tussen die inheemse gemeenskappe gedeel kan word wat om welke rede ook al aanspraak maak op outeurskap nie,
- die Nasionale Trust; of
- (f) waar die model 'n tradisionele model is, die lid van die inheemse gemeenskap wat die outeur van die model is, of waar die model deur die gemeenskap as 'n geheel ontwikkel is, of deur 'n groot deel daarvan, of 'n inheemse model is, 'n persoon wat gemagtig is om namens die gemeenskap op te tree;”;
- (d) deur in subartikel (1) na die omskrywing van “estetiese model” die volgende omskrywing in te voeg:
- “**‘Fonds’** die Nasionale Trustfonds vir Inheemse Kennis soos in artikel 1 van die Wet op Outeursreg omskryf;”;
- (e) deur in subartikel (1) na die omskrywing van “geïntegreerde stroombaan-topografie” die volgende omskrywing in te voeg:
- “**‘gemeenskapsprotokol’** 'n protokol deur 'n inheemse gemeenskap ontwikkel wat die struktuur van 'n inheemse gemeenskap en sy aansprake op inheemse kulturele uitdrukkings of kennis en inheemse modelle beskryf, en wat voorsiening maak vir prosedures vir voornemende gebruikers van sodanige inheemse kulturele uitdrukkings of kennis of inheemse modelle, om die gemeenskap se vooraf ingeligte instemming te verkry om oor wedersyds ooreengekome terme en voordeeldelingsooreenkomste te onderhandel;”;
- (f) deur in subartikel (1) na die omskrywing van “hof” die volgende omskrywings in te voeg:
- “**‘inheemse gemeenskap’** enige herkenbare gemeenskap van mense wat van oorsprong is van of histories gesetel is in 'n geografiese area of areas, binne die grense van die Republiek soos sodanige grense bestaan het op die datum van inwerkingtreding van die Wysigingswet op Intellektuele Eendomsreg, 2013, gekenmerk deur sosiale, kulturele en ekonomiese omstandighede wat hulle onderskei van ander dele van die nasionale gemeenskap, wat hulself identifiseer en deur ander groepe as 'n afsonderlike kollektief erken word;
- ‘inheemse kulturele uitdrukkings of kennis’** enige vorm, tasbaar of ontasbaar, of 'n kombinasie daarvan, waarin tradisionele kultuur en kennis beliggaam word, tussen generasies oorgelewer word, tasbare of ontasbare vorms van kreatiwiteit van inheemse gemeenskappe, met inbegrip van, maar nie beperk nie tot—
- (a) fonetiese of verbale uitdrukkings, soos stories, heldedigte, legendes, poësie, raaisels en ander vertellings, woorde, tekens, name en simbole;
- (b) musiek- of klankuitdrukkings, soos liedere, ritmes en instrumentale musiek, waarvan die klanke die uitdrukking van rituele is;

- (c) expressions by action, such as dances, plays, ceremonies, rituals, expressions of spirituality or religion, sports, traditional games, puppet performances, and other performances, whether fixed or unfixed; and
- (d) tangible expressions, such as material expressions of art, handicrafts, architecture, or tangible spiritual forms, and expressions of sacred places; 5
- ‘indigenous design’** means an aesthetic or functional design with an indigenous or traditional origin and a traditional character, including indigenous cultural expressions or knowledge which was created by persons who are or were members, currently or historically, of an indigenous community and which design is regarded as part of the heritage of the community: Provided that— 10
- (a) an aesthetic indigenous design shall be registered as “TA” and refers to an indigenous design applied to an article for the pattern or the shape or the configuration or the ornamentation thereof, or for two or more of those purposes, and by whatever means it is applied, having features which appeal to and are judged solely by the eye, irrespective of the aesthetic quality thereof; and 15
- (b) a functional indigenous design shall be registered as “TF” and refers to an indigenous design applied to an article for the pattern or the shape or the configuration thereof, or for two or more of those purposes, and by whatever means it is applied, having features which are necessitated by the function which the article to which the indigenous design is applied, is to perform;” 20
- (g) by the insertion after the definition of “Minister” of the following definition: 25
- “**‘National Trust’** means the National Trust for Indigenous Knowledge established by section 28I of the Copyright Act and which functions as the National Trust for traditional designs in terms of section 53G;” 30
- (h) by the addition in the definition of “proprietor” after paragraph (d) of the following paragraphs:
- “(e) where the design is a traditional design and— 35
- (i) the author of the design cannot be determined;
- (ii) the author of the design is an indigenous community which is no longer in existence; or
- (iii) the design cannot be shared between the indigenous communities claiming authorship for whatsoever reason, the National Trust; or 40
- (f) where the design is a traditional design, the member of the indigenous community who authored the design, or where the design was developed by the indigenous community as a whole, or by a large portion thereof, or is an indigenous design, the indigenous community or a person authorised to act on its behalf;” and 45
- (i) by the insertion in subsection (1) after the definition of “this Act” of the following definition:
- “**‘traditional design’** includes an indigenous design and a derivative indigenous design;”.

Insertion of sections 53A, 53B, 53C, 53D, 53E, 53F, 53G, 53H, 53I, 53J, 53K and 53L in Act 195 of 1993 50

12. The following sections are hereby inserted in the Designs Act, 1993 (Act No. 195 of 1993), after section 53:

- (c) uitdrukings deur aksie, soos danse, toneelstukke, seremonies, rituele, uitdrukings van spiritualiteit of geloof, sport en tradisionele spele, poppespele, en ander uitvoerings, hetsy vasgelê of onvasgelê; en
- (d) tasbare uitdrukings, soos wesenlike uitdrukings van kuns, kunsvlyt, argitektuur, en tasbare spirituele vorms, of uitdrukings van gewyde plekke; 5
- ‘inheemse model’** ’n estetiese of funksionele model met ’n inheemse of tradisionele oorsprong en ’n tradisionele karakter, met inbegrip van inheemse kulturele uitdrukings of kennis wat deur persone geskep is wat lede is of was, huidig of histories, van ’n inheemse gemeenskap en welke ontwerp as deel van die erfenis van die gemeenskap beskou word: Met dien verstande dat— 10
- (a) ’n estetiese inheemse model as “TA” geregistreer word en verwys na ’n inheemse model op ’n voorwerp aangewend vir die patroon of die vorm of die konfigurasie of die ornamentasie daarvan, of vir twee of meer van hierdie doeleindes, en op watter wyse dit ook al aangewend is, kenmerke het wat die oog opval en deur die blote oog beoordeel word, ongeag die estetiese kwaliteit daarvan; en 15
- (b) ’n funksionele inheemse ontwerp as “TF” geregistreer word en verwys na ’n inheemse model aangewend op ’n voorwerp vir die patroon of die vorm of die konfigurasie daarvan, of twee of meer van daardie doeleindes, en op welke manier dit ook al aangewend is, met kenmerke wat nodig gemaak word deur die funksie wat die voorwerp waarop die inheemse model aangewend is, moet verrig; 20
- ‘insamelingsvereniging’** ’n insamelingsvereniging wat geskep is deur die Wet op Outeursreg, hierdie Wet, of by ooreenkoms en wat onder andere— 25
- (a) aangeleenthede betreffende regte in modelle bestuur;
- (b) namens sy lede onderhandel om tantième en voordele en dit insamel; en 30
- (c) tantième en voordele aan modeleienaars versprei;”;
- (g) deur in subartikel (1) die omskrywing van “model” deur die volgende omskrywing te vervang: 35
- “**‘model’** ’n estetiese model [of], ’n funksionele model of ’n tradisionele model;”;
- (h) deur in subartikel (1) na die omskrywing van “modellekantoor” die volgende omskrywing in te voeg: 40
- “**‘Nasionale Trust’** die Nasionale Trust vir Inheemse Kennis ingestel deur artikel 28I van die Wet op Outeursreg en wat ingevolge artikel 53G as die Nasionale Trust vir tradisionele modelle funksioneer;”;
- (i) deur in subartikel (1) na die omskrywing van “persoonlike verteenwoordiger” die volgende omskrywing in te voeg: 45
- “**‘Raad’** die Nasionale Raad vir Inheemse Kennis soos in artikel 1 van die Wet op Outeursreg omskryf;”;
- (j) deur in subartikel (1) na die omskrywing van “stel maskerwerke” die volgende omskrywing in te voeg: 50
- “**‘tradisionele model’** beide ’n inheemse model en ’n afgeleide inheemse model;” en
- (k) deur in subartikel (1) na die omskrywing van “uitreikingsdatum” die volgende omskrywing in te voeg: 50
- “**‘Wet op Outeursreg’** die Wet op Outeursreg, 1978 (Wet No. 98 van 1978);”.

Invoeging van artikels 53A, 53B, 53C, 53D, 53E, 53F, 53G, 53H, 53I, 53J, 53K en 53L in Wet 195 van 1993

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12. Die volgende artikels word hierby in die Wet op Modelle, 1993 (Wet No. 195 van 1993), na artikel 53 ingevoeg:

“Application to traditional designs

53A. (1) Subject to this section, sections 53B, 53C, 53D, 53E, 53F, 53G, 53H, 53I, 53J, 53K and 53L, the provisions of this Act shall, except in so far as is otherwise provided in the said sections, and in so far as they can be applied, apply to traditional designs.

(2) The provisions of section 2(1) shall not apply in respect of indigenous designs.

(3) The provisions of this Act shall apply in respect of all traditional designs, whether created before or after the date of commencement of the Intellectual Property Laws Amendment Act, 2013.

(4) Nothing in the sections contemplated in subsection (1) shall be construed as conferring any rights on any person in respect of intellectual property which is not a traditional design.

Traditional designs eligible for registration

53B. (1) The author of a derivative indigenous design which is— 15

(a) new; and

(b) has features which are based on or derived from an indigenous design of an indigenous community,

may, in the prescribed manner and on payment of the prescribed fee, apply for registration of such derivative indigenous design.

(2) A derivative indigenous design shall be deemed to be new if it is different from or does not form part of the state of the art immediately before—

(a) the date of application for registration thereof; or

(b) the release date thereof,

whichever is the earlier: Provided that in the case of the release date being a date after the date of commencement of the Intellectual Property Laws Amendment Act, 2013, the application for the registration of the design is lodged within two years of such release date.

(3) No right in a derivative indigenous design provided for in the Intellectual Property Laws Amendment Act, 2013, shall vest or be eligible for registration unless— 30

(a) prior informed consent has been obtained from the relevant authority or indigenous community;

(b) disclosure of the indigenous cultural expressions or knowledge has been made to the Commission; and 35

(c) a benefit-sharing agreement between the applicant and the relevant authority or indigenous community has been concluded.

(4) If an indigenous community has established a community protocol, the interaction with the indigenous community contemplated in subsection (3) must take such protocol into account. 40

(5) An indigenous community may in the prescribed manner and on payment of the prescribed fee, apply for registration of an indigenous design.

National Database 45

53C. (1) The National Database of Indigenous Knowledge contemplated in section 28C of the Copyright Act shall constitute and function as a sub-register within the register of designs for purposes of this Act, in the manner provided for in the said section 28C of the Copyright Act.

(2) The registrars of patents, copyright, trade marks and designs shall open a Part T in the register which shall relate to traditional designs. 50

(3) Traditional designs contained in applications referred to the Council by the registrars of patents, copyright, trade marks and designs in terms of subsection (15) and traditional designs registered in terms of subsection (12) or (17)(a), shall be recorded in the database. 55

“Toepassing op tradisionele modelle

53A. (1) Behoudens hierdie artikel, artikels 53B, 53C, 53D, 53E, 53F, 53G, 53H, 53I, 53J, 53K en 53L, is die bepalings van hierdie Wet, buiten vir sover andersins bepaal in die genoemde artikels, en vir sover dit toegepas kan word, van toepassing op tradisionele modelle.

(2) Die bepalings van artikel 2(1) is nie van toepassing ten opsigte van tradisionele modelle nie.

(3) Die bepalings van hierdie Wet is van toepassing ten opsigte van alle tradisionele modelle, hetsy dit voor of na die datum van inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, geskep is.

(4) Niks in die artikels in subartikel (1) beoog word geag regte aan enige persoon te verleen ten opsigte van intellektuele eiendom wat nie 'n tradisionele model is nie.

Tradisionele modelle geskik vir registrasie

53B. (1) Die outeur van 'n afgeleide model wat—

(a) nuut is; en

(b) kenmerke het wat gebaseer is op of afgelei is van 'n inheemse model van 'n inheemse gemeenskap,

kan, op die voorgeskrewe wyse en by betaling van die voorgeskrewe gelde, aansoek doen om registrasie van sodanige afgeleide inheemse model.

(2) 'n Afgeleide inheemse model word geag nuut te wees indien dit verskil van of nie deel vorm nie van die stand van die tegniek onmiddellik voor—

(a) die datum van aansoek om registrasie daarvan; of

(b) die uitreikingsdatum daarvan,

welke ook al die vroegste is: Met dien verstande dat in die geval waar die uitreikingsdatum 'n datum na die datum van die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, is, die aansoek om die registrasie van die model binne twee jaar van sodanige uitreikingsdatum ingestel moet word.

(3) Geen reg in 'n afgeleide inheemse model waarvoor in die Wysigingswet op Intellektuele Eiendomsreg, 2013, voorsiening gemaak word, vestig in of is geskik vir registrasie nie tensy—

(a) vooraf ingeligte instemming van die betrokke gesag of inheemse gemeenskap verkry is nie;

(b) openbaarmaking van die inheemse kulturele uitdrukkings of kennis aan die Kommissie gedoen is; en

(c) 'n voordeelsooreenkoms tussen die aansoeker en die toepaslike gesag of inheemse gemeenskap aangegaan is.

(4) Indien 'n inheemse gemeenskap 'n gemeenskapsprotokol ingestel het, moet die interaksie met die inheemse gemeenskap in subartikel (3) beoog sodanige protokol in ag neem.

(5) 'n Inheemse gemeenskap kan op die voorgeskrewe wyse en by betaling van die voorgeskrewe gelde, aansoek doen om registrasie van 'n inheemse model.

Nasionale Databasis

53C. (1) Die Nasionale Databasis van Inheemse Kennis in artikel 28C van die Wet op Outeursreg beoog stel 'n subregister binne die register van modelle daar en funksioneer as sodanig by die toepassing van hierdie Wet, op die wyse in artikel 28C van die Wet op Outeursreg bepaal.

(2) Die registrateurs van patente, outeursreg, handelsmerke en modelle moet 'n Deel T in die register oopmaak wat met tradisionele modelle verband hou.

(3) Tradisionele modelle vervat in aansoeke na die Raad verwys deur die registrateurs van patente, outeursreg, handelsmerke en modelle ingevolge subartikel (15) en tradisionele ontwerpe wat ingevolge subartikel (12) of (17)(a) geregistreer is, word in die databasis aangeteken.

(4) For the purposes of this Act, an indigenous community is deemed to be a juristic person.

(5) Any—

- (a) person who created the derivative indigenous design;
- (b) person authorised to act on behalf of an indigenous community, or on behalf of an individual, or
- (c) person appointed by the Minister in the manner prescribed, to act on behalf of an indigenous community which is no longer in existence; may submit to the registrars of patents, copyright, trade marks and designs a request together with the appropriate information for a traditional design to be registered in the database, whereupon the provisions of the said section 28C of the Copyright Act shall, with necessary changes, apply.

(6) If the applicant for registration is an indigenous community, the request referred to in subsection (5) shall include a community protocol setting out relevant information about the indigenous community, including—

- (a) identification of the indigenous community and its acknowledged structure;
- (b) full details of the appointed representative of the indigenous community in whose name the indigenous design must be registered;
- (c) if the representative is a juristic person, full details of registration of such juristic person;
- (d) the indigenous design that is being registered and the justification for the community claiming rights to it;
- (e) whether such indigenous design is sacred, or should for any other reason, which must be provided, be kept confidential; and
- (f) a written undertaking by the representative of the indigenous community to the effect that he or she will hold the right to the indigenous design on behalf of the indigenous community.

(7) The Council must assist the indigenous community to ensure that the community protocol corresponds with the structure of the indigenous community.

(8) The community protocol must be kept with the registration of the indigenous design.

(9) An indigenous community may register an indigenous design: Provided that where the indigenous community—

- (a) registers an indigenous design within 36 months from the commencement of the Intellectual Property Laws Amendment Act, 2013, or such longer period as the Minister may prescribe, such indigenous community shall enjoy the right to royalties and benefits conferred by the Intellectual Property Laws Amendment Act, 2013, from the date of its commencement; or
- (b) registers an indigenous design after the period contemplated in subsection (a), such indigenous community shall enjoy the right to royalties and benefits conferred by the Intellectual Property Laws Amendment Act, 2013, from the date of registration.

(10) The Commission may determine that certain information recorded in the database must be treated confidentially: Provided that if the community protocol indicates that the information is sacred or must be kept in confidence, the Commission must treat the information confidentially.

(11) Any person contemplated in subsection (5), or a third party who has an interest in a traditional design may submit to the registrars of patents, copyright, trade marks and designs a request together with the appropriate information as prescribed for the amendment or removal of a traditional design in the database, whereupon the provisions of section 28C(17) of the Copyright Act shall, with necessary changes, apply.

(12) The registrars of patents, copyright, trade marks and designs shall examine any application for the registration of a traditional design received in terms of this section and, if it complies with the requirements of this Act, register such design in Part T of the database which contains registrations with regard to traditional designs as “TA”, if it is an indigenous design or

- (4) By die toepassing van hierdie Wet word 'n inheemse gemeenskap geag 'n regspersoon te wees.
- (5) 'n Persoon wat—
- (a) die afgeleide inheemse model geskep het;
 - (b) gemagtig is om namens 'n inheemse gemeenskap of namens 'n individu op te tree; of
 - (c) 'n persoon op die voorgeskrewe wyse deur die Minister aangestel, om namens 'n inheemse gemeenskap op te tree wat nie meer bestaan nie, kan aan die registrateurs van patente, outeursreg, handelsmerke en modelle 'n versoek tesame met die gepaste inligting voorlê dat 'n tradisionele model in die databasis aangeteken word, waarby die bepalings van die genoemde artikel 28C van die Wet op Outeursreg, met die nodige veranderinge, van toepassing is.
- (6) Indien die aansoeker om registrasie 'n inheemse gemeenskap is, moet die versoek in subartikel (5) bedoel 'n gemeenskapsprotokol insluit wat die toepaslike inligting oor die gemeenskap uiteensit, met inbegrip van—
- (a) identifikasie van die inheemse gemeenskap en sy erkende struktuur;
 - (b) volle besonderhede van die aangestelde verteenwoordiger van die inheemse gemeenskap in wie se naam die inheemse model geregistreer moet word;
 - (c) indien die verteenwoordiger 'n regspersoon is, volle besonderhede van registrasie van sodanige regspersoon;
 - (d) die inheemse model wat geregistreer word en die regverdiging vir die gemeenskap om aanspraak op regte daarop te maak;
 - (e) of sodanige inheemse model gewyd is, of om enige ander rede, wat verskaf moet word, vertroulik gehou moet word; en
 - (f) 'n geskrewe onderneming deur die verteenwoordiger van die inheemse gemeenskap ten effekte dat hy of sy die reg op die inheemse model namens die inheemse gemeenskap sal hou.
- (7) Die Raad moet die inheemse gemeenskap bystaan om te verseker dat die gemeenskapsprotokol ooreenstem met die struktuur van die inheemse gemeenskap.
- (8) Die gemeenskapsprotokol moet saam met die registrasie van die inheemse model gehou word.
- (9) 'n Inheemse gemeenskap kan 'n inheemse model registreer: Met dien verstande dat waar die inheemse gemeenskap—
- (a) 'n inheemse model registreer binne 36 maande vanaf die inwerking-treding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, of sodanige langer tydperk wat die Minister kan voorskryf, sodanige inheemse gemeenskap die reg op tantième en voordele geniet wat deur die Wysigingswet op Intellektuele Eiendomsreg, 2013, vanaf die inwerking-tredingsdatum verleen word; of
 - (b) 'n inheemse model registreer na die tydperk in subartikel (a) beoog, die inheemse gemeenskap die reg op tantième en voordele geniet wat deur die Wysigingswet op Intellektuele Eiendomsreg, 2013, vanaf die datum van registrasie verleen word.
- (10) Die Kommissie kan bepaal dat sekere inligting wat in die databasis aangeteken is vertroulik hanteer moet word: Met dien verstande dat indien die gemeenskapsprotokol aandui dat die inligting gewyd is of vertroulik is, die Kommissie die inligting as vertroulik moet hanteer.
- (11) Enige persoon in subartikel (5) beoog, of 'n derde party wat 'n belang in 'n tradisionele model het, kan 'n versoek tesame met die gepaste inligting soos voorgeskryf aan die registrateurs van patente, outeursreg, handelsmerke en modelle voorlê vir die wysiging of verwydering van 'n tradisionele model van die databasis, waarby die bepalings van artikel 28C(16) van die Wet op Outeursreg, met die nodige veranderinge, geld.
- (12) Die registrateurs van patente, outeursreg, handelsmerke en modelle moet enige aansoek om die registrasie van 'n tradisionele model wat ingevolge hierdie artikel ontvang is, ondersoek en, indien dit voldoen aan die vereistes van hierdie Wet, sodanige model in Deel T van die databasis wat registrasies betreffende tradisionele modelle bevat, as "TA" registreer indien dit 'n inheemse model of afgeleide inheemse model van 'n estetiese

derivative indigenous design of an aesthetic nature and as “TF” if it is an indigenous design or derivative indigenous design of a functional nature.

(13) An indigenous design may be registered only in Part T of the database.

(14) Save for as otherwise provided in this section, sections 14, 15, 16, 17, 18, 19 and 31 shall apply, with necessary changes, in relation to the registration of a traditional design.

(15) If in the case of a traditional design the registrars of patents, copyright, trade marks and designs is in doubt as to whether or not the application complies with the requirements of the Act, the registrars of patents, copyright, trade marks and designs shall refer the application to the Council for advice.

(16) The Council shall consider such application and advise the registrars of patents, copyright, trade marks and designs within three months of the referral whether or not, in its opinion, the design can be registered.

(17) Upon receipt of the advice of the Council, the registrars of patents, copyright, trade marks and designs shall either—

(a) register the design if it is found to comply with the requirements of the Act; or

(b) refuse the application.

(18) In the case of any traditional design being registered as contemplated in subsection (12) or (17)(a), the registrars of patents, copyright, trade marks and designs shall notify the Council.

Effect of registration of traditional design

53D. The provisions of section 20 shall, with necessary changes, apply.

Period of protection

53E. (1) The duration of the registration of—

(a) a traditional design registered in terms of section 53B(2)(a) or 53B(2)(b) shall be in respect of—

(i) an aesthetic derivative indigenous design, 15 years from the date of registration or from the release date, whichever date is earlier, and

(ii) a functional derivative indigenous design, 10 years from the date of registration or from the release date, whichever date is earlier,

subject to the payment of the prescribed renewal fee; and

(b) an indigenous design as set out in section 53B(5) shall be in perpetuity.

(2) Any application in terms of section 31 relating to the revocation of a traditional design shall also be served on the Council in the prescribed manner.

(3) If the Council is served with an application for the revocation of a traditional design as contemplated in subsection (2), the Council shall notify the registrars of patents, copyright, trade marks and designs within the prescribed period whether it intends to contest the revocation.

Infringement, exceptions, royalties and benefits

53F. (1) Notwithstanding section 35(9) and (10), the proprietor of a traditional design shall not be entitled to interfere with or restrain a person who commenced making, importing, using or disposing of any articles included in the class in which the traditional design is registered and embodying—

(a) the traditional design; or

(b) a design not substantially different from the traditional design, prior to the commencement of the Intellectual Property Laws Amendment Act, 2013: Provided that if any commercial benefit is derived from any such

aard is en as “TF” indien dit ’n inheemse model of afgeleide inheemse model van ’n funksionele aard is.

(13) ’n Inheemse model kan slegs in Deel T van die databasis geregistreer word.

(14) Tensy anders bepaal in hierdie artikel, geld artikels 14, 15, 16, 17, 18, 19 en 31, met die nodige veranderinge, in verband met ’n registrasie van ’n tradisionele ontwerp.

(15) Indien in die geval van ’n tradisionele model die registrateurs van patente, outeursreg, handelsmerke en modelle twyfel of die aansoek voldoen aan die vereistes van die Wet al dan nie, verwys die registrateurs van patente, outeursreg, handelsmerke en modelle die aansoek vir advies na die Raad.

(16) Die Raad oorweeg sodanige aansoek en gee binne drie maande vanaf die verwysing raad aan die registrateurs van patente, outeursreg, handelsmerke en modelle of, na sy mening, die model geregistreer kan word al dan nie.

(17) By ontvangs van die advies van die Raad moet die registrateurs van patente, outeursreg, handelsmerke en modelle—

(a) die model registreer indien gevind word dat dit aan die vereistes van die Wet voldoen; of

(b) die aansoek weier.

(18) Waar ’n tradisionele model soos in subartikel (12) of (17)(a) beoog geregistreer word, stel die registrateurs van patente, outeursreg, handelsmerke en modelle die Raad in kennis.

Uitwerking van registrasie van tradisionele model

53D. Die bepalings van artikel 20 is, met die nodige veranderinge, van toepassing.

Duur van beskerming

53E. (1) Die termyn van die registrasie van—

(a) ’n tradisionele model ingevolge artikel 53B(2)(a) of 53B(2)(b) is ten opsigte van—

(i) ’n estetiese afgeleide inheemse model, 15 jaar vanaf die datum van registrasie of vanaf die uitreikingsdatum, welke datum ook al die vroegste is; en

(ii) ’n funksionele afgeleide inheemse model, 10 jaar vanaf die datum van registrasie of vanaf die uitreikingsdatum, welke datum ook al die vroegste is,

behoudens die betaling van die voorgeskrewe hernuwingsgelde; en

(b) ’n inheemse model soos uiteengesit in artikel 53B(5) is vir ewig.

(2) Enige aansoek ingevolge artikel 31 in verband met die herroeping van ’n tradisionele ontwerp sal ook op die voorgeskrewe wyse op die Raad beteken word.

(3) Indien ’n aansoek op die Raad beteken word om die herroeping van ’n tradisionele model soos in subartikel (2) beoog, stel die Raad die registrateurs van patente, outeursreg, handelsmerke en modelle binne die voorgeskrewe tydperk in kennis of die Raad van voorneme is om die herroeping teen te staan.

Skending, uitsonderings, tantième en voordele

53F. (1) Ondanks artikel 35(9) en (10) is die eienaar van ’n tradisionele model nie daarop geregtig nie om in te meng met ’n persoon, of om ’n persoon te belet, wat begin het om artikels ingesluit in die klas waarin die tradisionele model geregistreer is en wat—

(a) die tradisionele model beliggaam; of

(b) ’n model beliggaam wat nie wesenslik van die tradisionele model verskil nie,

te maak, in te voer, te gebruik of oor te beskik voor die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013: Met dien

act, a royalty, benefit, or both such royalty and benefit, shall be paid by such person to the proprietor of the traditional design as provided for in subsection (4).

(2) Any person who has acquired rights as contemplated in subsection (1) must comply with section 53B(3)(b) and (c), within 12 months after the commencement of the Intellectual Property Laws Amendment Act, 2013: Provided that—

(a) the rights of the indigenous community to royalties or benefits or to both such royalties and benefits shall come into existence on the commencement of the Intellectual Property Laws Amendment Act, 2013; and

(b) save for the obligations contemplated in this subsection and subsection (1) such person shall continue to hold his or her right in the manner he or she has done prior to the commencement of the Intellectual Property Laws Amendment Act, 2013.

(3) Any person who intends to acquire rights pertaining to use of an indigenous design after the commencement of the Intellectual Property Laws Amendment Act, 2013, must comply with section 53B(3).

(4) The amount or value of a royalty, benefit, or both such royalty and benefit, contemplated in subsection (1) or negotiated for in the benefit sharing agreement contemplated in subsections (2) and (3) shall be determined—

(a) by agreement between the person who is the user of the traditional design and the proprietor of the traditional design;

(b) by one or more collecting societies representing either or both of these parties; or

(c) in the absence of agreement, by—

(i) an institution accredited by the Commission as contemplated in section 53I(1); or

(ii) arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

(5) Agreements concluded in terms of subsections (2), (3) or (4) must be submitted to the Council, who shall—

(a) scrutinise the agreement for compliance with intellectual property laws, including this Act and the community protocol; and

(b) where any clause within the contract is regarded as not being to the benefit of the indigenous community or member of the indigenous community concerned, require renegotiation of said clause and provide the necessary advice.

(6) The owner of a derivative indigenous design shall pay a royalty, benefit, or both such royalty and benefit, to the owner of an indigenous design from which the derivative indigenous design was derived.

(7) Any person deriving commercial benefit from the use of a traditional design, which commercial benefit is less than the prescribed value shall be excluded from the requirements of sections 53B(3), 53F(2), 53F(3) and the requirement to pay royalties and benefits as contemplated in section 53F(1) and (3).

(8) A traditional design may be used without obtaining prior consent of the traditional design proprietor, if it is for the purpose of—

(a) private study or private use;

(b) professional criticism or review;

(c) reporting on current events;

(d) education;

(e) scientific research;

(f) legal proceedings; or

(g) the making of recordings and other reproductions of indigenous cultural expressions or knowledge for purposes of their inclusion in an archive, inventory, dissemination for non-commercial cultural heritage safeguarding purposes and incidental uses: Provided that only such portions as is reasonably required are used and that the traditional design proprietor's name is acknowledged.

verstande dat indien enige kommersiële voordeel uit enige sodanige handeling getrek word na die datum van registrasie van die tradisionele model, sodanige persoon tantième, 'n voordeel, of beide sodanige tantième en voordeel, aan die eienaar van die tradisionele model moet betaal soos in subartikel (4) bepaal.

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(2) 'n Persoon wat regte soos in subartikel (1) beoog verkry het, moet binne 12 maande na die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, aan artikel 53B(3)(b) en (c) voldoen: Met dien verstande dat—

(a) die aanspraak van die inheemse gemeenskap op tantième of voordele of beide sodanige tantième en voordele begin by die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013; en

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(b) behalwe vir die verpligtinge in hierdie artikel en subartikel (1) beoog, sodanige persoon sy of haar reg in die afgeleide inheemse model behou op die wyse soos voor die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013.

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(3) 'n Persoon wat van voorneme is om regte te verkry in verband met die gebruik van die inheemse ontwerp na die inwerkingtreding van die Wysigingswet op Intellektuele Eiendomsreg, 2013, moet aan artikel 53B(3) voldoen.

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(4) Die bedrag of waarde van 'n tantième, voordeel, of beide sodanige tantième en voordeel, in subartikel (1) beoog of voor onderhandel in die voordeelingsooreenkoms in subartikels (2) en (3) beoog, word bepaal—

(a) by ooreenkoms tussen die persoon wat die gebruiker van die merk is en die eienaar van die merk;

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(b) deur een of meer insamelingsverenigings wat een van of beide van hierdie partye verteenwoordig; of

(c) by ontstentenis van 'n ooreenkoms, deur—

(i) 'n instelling deur die Kommissie geakkrediteer soos in artikel 53I(1) beoog; of

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(ii) arbitrasie ingevolge die Wet op Arbitrasie, 1965 (Wet No. 42 van 1965).

(5) Ooreenkomste ingevolge subartikels (2), (3) en (4) aangegaan moet aan die Raad voorgelê word, wat—

(a) die ooreenkoms moet nagaan vir nakoming van intellektuele goederewette, met inbegrip van hierdie Wet en die gemeenskaps-protokol;

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(b) waar enige klousule in die kontrak geag word nie tot voordeel van die betrokke inheemse gemeenskap of lid van die inheemse gemeenskap te wees nie, heronderhandeling van die genoemde klousule vereis en die nodige advies voorsien.

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(6) Die eienaar van 'n afgeleide inheemse model moet 'n tantième, voordeel, of beide sodanige tantième en voordeel, aan die eienaar van die inheemse model waarvan die afgeleide inheemse model afgelei is, betaal.

(7) 'n Persoon wat kommersiële voordeel trek uit die gebruik van 'n tradisionele model, welke kommersiële voordeel minder is as die voorgeskrewe waarde, word uitgesluit van die vereistes van artikels 53B(3), 53F(2), 53F(3) en die vereiste om tantième en voordele te betaal soos beoog in artikel 53F(1) en (3).

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(8) 'n Tradisionele model kan gebruik word sonder om vooraf toestemming van die model se eienaar te verkry, indien dit is vir die doel van—

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(a) privaatstudie of privaatgebruik;

(b) professionele kritiek of resensie;

(c) verslagdoening oor aktuele gebeure;

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(d) onderwys;

(e) wetenskaplike navorsing;

(f) geregtelike verrigtinge; of

(g) die maak van opnames en ander reproduksies van inheemse kulturele uitdrukkings of kennis vir insluiting in 'n argief, inventaris, verspreiding vir niekommersiële kulturele beskermingsdoeleindes en toevallige gebruike: Met dien verstande dat slegs sodanige dele wat redelikerwys vereis word, gebruik word en dat die eienaar van die tradisionele model se naam erken word.

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National Trust and Fund

53G. (1) The National Trust and the Fund shall constitute and function as the National Trust and Fund in respect of traditional designs for purposes of this Act, and the provisions of section 28I of the Copyright Act shall, with necessary changes, apply.

(2) All monies payable in respect of the use of traditional designs registered under this Act and owned by the National Trust shall be paid into the Fund contemplated in subsection (1) and shall be applied for the benefit of indigenous communities in the manner prescribed in section 28I of the Copyright Act.

Assignment and licences

53H. (1) Save for—

(a) assignment of a right in an indigenous design to a collecting society; or
(b) transfer to a duly appointed representative of the community,
the right in an indigenous design shall not be transmissible by assignment, testamentary disposition or operation of law, but the doing of any act under section 20 may be authorised.

(2) Should the proprietary rights referred to in subsection (1), vest in a representative of an indigenous community, the indigenous community may—

(a) upon the death or liquidation of the said representative, as the case may be; or

(b) prior to the death or liquidation of the said representative, by agreement as set out in the community protocol, transfer such proprietary rights to a natural or juristic person, as the indigenous community may decide.

(3) Should the proprietary rights referred to in subsection (1) vest in a representative of an indigenous community, such proprietary rights shall automatically upon the death of the last living member of such indigenous community transfer to the National Trust.

Disputes

53I. (1) The Commission must accredit certain institutions which have the necessary capacity, to adjudicate any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013.

(2) Any dispute arising from the application of the Intellectual Property Laws Amendment Act, 2013, must first be instituted in an institution accredited as contemplated in subsection (1).

(3) No person appearing in proceedings before an institution contemplated in subsection (1) shall have the right to legal representation unless—

(a) the adjudicator and all other parties consent; or

(b) the adjudicator, after considering—

(i) the nature of the questions of law raised by the dispute;

(ii) the relative complexity and importance of the dispute; and

(iii) the comparative ability of the parties to represent themselves in the adjudication,

concludes that it would be unreasonable to expect a party to deal with the adjudication without legal representation.

(4) Any adjudication must take into account existing customary dispute resolution mechanisms.

(5) The decision of the institution referred to in subsection (1) may be served, executed and enforced as if it was an order of the High Court.

(6) Any party to proceedings before an institution referred to in subsection (1) may appeal to a court of law against any decision of such

Nasionale Trust en Fonds

53G. (1) Die Nasionale Trust en die Fonds maak die Nasionale Trust en Fonds uit en funksioneer as sodanig ten opsigte van tradisionele modelle vir die doeleindes van hierdie Wet, en die bepalings van die genoemde artikel 28I is, met die nodige veranderinge, van toepassing.

(2) Alle gelde betaalbaar ten opsigte van die gebruik van 'n tradisionele model wat ingevolge hierdie Wet geregistreer is en deur die Nasionale Trust besit word, sal in die Fonds in subartikel (1) beoog inbetaal word en tot voordeel van die inheemse gemeenskappe toegepas word op die wyse in artikel 28I van die Wet op Outeursreg bepaal word.

Sessie en lisensies

53H. (1) Behalwe in die geval van—

(a) sessie van 'n reg in 'n inheemse model aan 'n insamelingsvereniging; of

(b) oordrag na 'n behoorlik aangestelde verteenwoordiger van die gemeenskap,

is die reg in 'n inheemse model nie oordraagbaar by sessie, testamentêre beskikking of wetswerking nie, maar die verrigting van enige handeling kragtens artikel 20 kan goedgekeur word.

(2) Sou die eiendomsreg in subartikel (1) bedoel in 'n verteenwoordiger van 'n inheemse gemeenskap vestig, kan die inheemse gemeenskap—

(a) by die dood of likwidasië van die verteenwoordiger, na gelang van die geval; of

(b) voor die dood of likwidasië van die genoemde verteenwoordiger, by ooreenkoms soos uiteengesit in die gemeenskapsprotokol, sodanige verteenwoordiging na 'n natuurlike of regspersoon oordra, volgens die besluit van die inheemse gemeenskap.

(3) Sou die eiendomsregte in subartikel (1) bedoel in 'n verteenwoordiger van 'n inheemse gemeenskap vestig, dra sodanige eiendomsregte by die dood van die laaste lewende lid van sodanige inheemse gemeenskap oor na die Nasionale Trust.

Geskille

53I. (1) Die Kommissie moet sekere instellings akkrediteer wat die nodige kapasiteit het, om enige geskil te bereg wat ontstaan uit die toepassing van die Wysigingswet op Intellektuele Eiendomsreg, 2013.

(2) Enige geskil wat ontstaan uit die toepassing van die Wysigingswet op Intellektuele Eiendomsreg, 2013, moet eers in 'n instelling ingestel word wat soos in subartikel (1) beoog geakkrediteer is.

(3) Geen persoon wat in verrigtinge voor 'n instelling in subartikel (1) beoog verskyn het die reg op regsverteenvoording nie tensy—

(a) die beregter en alle ander partye instem; of

(b) die beregter, na oorweging van—

(i) die aard van die regsrae wat uit die geskil na vore kom;

(ii) die relatiewe ingewikkeldheid en belang van die geskil; en

(iii) die betreklike vermoë van die partye om hulself in die beregting te verteenwoordig,

tot die slotsom kom dat dit onredelik sal wees om van die party te verwag om die beregting sonder regsverteenvoording te hanteer.

(4) Enige beregting moet bestaande gewoonte geskilbeslegtingsmeganismes in ag neem.

(5) Die beslissing van die instelling in subartikel (1) bedoel, kan beteken, uitgevoer en toegepas word asof dit 'n bevel van die Hooggeregshof was.

(6) 'n Party in verrigtinge voor 'n instelling in subartikel (1) bedoel, kan by 'n geregshof appèl aanteken teen enige beslissing van sodanige

institution, and the appeal must be noted and dealt with in the manner prescribed by law for appeals against a civil order or decision of a single judge.

(7) The Minister shall prescribe the fees, processes and formalities relating to the institution and adjudication of a dispute.

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Council

53J. The Council shall advise on matters relating to traditional designs under this Act.

Compliance with international agreements

53K. (1) The Minister may by notice in the *Gazette* provide that any provision of this Act specified in such notice shall in the case of any country so specified apply so that—

(a) a community recognised in the specified country as an indigenous community shall be deemed to be an indigenous community as defined in this Act; and

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(b) a traditional design recognised in the specified country as a traditional design shall be deemed to be a traditional design as defined in this Act.

(2) The Minister may in the notice in subsection (1) make the provisions of this Act applicable to the following in respect of a country specified in the notice:

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(a) Its citizens or subjects;

(b) persons who at material times are domiciled or resident in the specified country and who are members of an indigenous community in that country; and

(c) juristic persons incorporated under the laws of the specified country and representing indigenous communities of that country.

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(3) The notice in subsection (1) may—

(a) include exceptions or modifications to the application of the Act in respect of a specified country;

(b) provide for general application of the Act; or

(c) limit application of the Act to such types of traditional designs as may be specified.

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(4) No notice shall be issued under this section in respect of any country which is not a party to an international agreement relating to designs to which the Republic is also a party, unless the Minister is satisfied that, in respect of the class of designs to which the notice relates, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of traditional designs under this Act.”.

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Amendment of section 54 of Act 195 of 1993

13. Section 54 of the Designs Act, 1993 (Act No. 195 of 1993), is hereby amended—

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(a) by the substitution for paragraph (a) of the following paragraph:

“(a) with the concurrence of the Minister of [State Expenditure] Finance, prescribing the matters in respect of which fees shall be payable, and the tariff of such fees;”; and

(b) by the addition after paragraph (f) of the following paragraphs:

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“(fA) providing for the fees, processes and formalities related to the submission and adjudication of a dispute set out in section 53I;

(fB) in consultation with the Minister of Finance, providing for the establishment, composition, funding and functions of collecting societies contemplated in section 53F, and any other matter that it may be necessary or expedient to regulate for the proper functioning of such societies;

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instelling, en die appèl moet aangeteken en hanteer word op die wyse soos wetlik voorgeskryf vir appèlle teen 'n siviele bevel of besluit van 'n enkele regter.

(7) Die Minister skryf die gelde, prosesse en formaliteite voor in verband met die instelling en beregting van 'n geskil.

Raad

53J. Die Raad sal advies voorsien oor aangeleenthede betreffende tradisionele modelle kragtens hierdie Wet.

Nakoming van internasionale ooreenkomste

53K. (1) Die Minister kan by kennisgewing in die *Staatskoerant* bepaal dat enige bepaling van hierdie Wet in sodanige kennisgewing vermeld in die geval van 'n land aldus vermeld van toepassing is sodat—

(a) 'n gemeenskap wat in die vermelde land erken word as 'n inheemse gemeenskap, 'n inheemse gemeenskap is soos in hierdie Wet omskryf; en

(b) 'n tradisionele model wat in die vermelde land erken word as 'n tradisionele model, 'n tradisionele model is soos in hierdie Wet omskryf.

(2) Die Minister kan in die kennisgewing in artikel (1) die bepalings van hierdie Wet van toepassing maak op die volgende ten opsigte van 'n land in die kennisgewing vermeld:

(a) Sy burgers of onderdane;

(b) persone wat op wesenlike tye in die genoemde land woon of woonagtig is en wat lede van 'n inheemse gemeenskap in daardie land is; en

(c) regspersone ingelyf kragtens die wette van die vermelde land en wat inheemse gemeenskappe van daardie land verteenwoordig.

(3) Die kennisgewing in artikel (1) bedoel kan—

(a) uitsonderings of veranderings aan die toepassing van die Wet ten opsigte van 'n vermelde land insluit;

(b) vir 'n algemene toepassing van die Wet voorsiening maak; of

(c) toepassing van die Wet beperk tot sodanige tipes tradisionele modelle soos bepaal kan word.

(4) Geen kennisgewing sal kragtens hierdie artikel uitgereik word ten opsigte van enige land wat nie 'n party is tot 'n konvensie betreffende modelle waartoe die Republiek ook 'n party is nie, tensy die Minister tevrede is dat, ten opsigte van die klas van modelle waarmee die kennisgewing verband hou, voorsiening gemaak is of sal word kragtens die wette van daardie land waarby voldoende beskerming aan die eienaars van tradisionele handelsmerke kragtens hierdie Wet verleen sal word.”

Wysiging van artikel 54 van Wet 195 van 1993

13. Artikel 54 van die Wet op Modelle, 1993 (Wet No. 195 van 1993), word hierby gewysig—

(a) deur paragraaf (a) deur die volgende paragraaf te vervang:

“(a) met die instemming van die Minister van [Staatsbesteding] Finansies, wat die aangeleenthede ten opsigte waarvan gelde betaalbaar is, en die tarief van daardie gelde, voorskryf;” en

(b) deur die volgende paragrawe na paragraaf (f) in te voeg:

“(fA) wat voorsiening maak vir die gelde, prosesse en formaliteite ten opsigte van die voorlegging en beregting van 'n geskil in artikel 53I uiteengesit;

(fB) in oorleg met die Minister van Finansies, wat voorsiening maak vir die instelling, samestelling, befondsing en werksaamhede van insamelingsverenigings in artikel 53F beoog, en enige ander aangeleentheid wat nodig of wenslik is om te reël vir die behoorlike funksionering van sodanige verenigings;

- (fC) providing for the appointment of a person to act on behalf of an indigenous community which is no longer in existence;”.

Insertion of section 54A in Act 195 of 1993

14. The following section is hereby inserted after section 54 of the Designs Act, 1993 (Act No. 195 of 1993):

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“Guidelines

54A. (1) The Minister may issue guidelines on any aspect of the Intellectual Property Laws Amendment Act, 2013, including—

- (a) protection of traditional designs;
- (b) the database, in so far as it relates to traditional designs;
- (c) the National Trust and Fund, in so far as it relates to traditional designs;
- (d) the Council, in so far as it relates to traditional designs; and
- (e) the dispute resolution process as set out in section 53I.”.

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Short title and commencement

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15. This Act is called the Intellectual Property Laws Amendment Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(fC) wat voorsiening maak vir die aanstelling van 'n persoon om namens 'n inheemse gemeenskap op te tree wat nie meer bestaan nie;”.

Invoeging van artikel 54A in Wet 195 van 1993

14. Die volgende artikel word hierby na artikel 54 van die Wet op Modelle, 1993, (Wet No. 195 van 1993), ingevoeg: 5

“Riglyne

54A. (1) Die Minister kan riglyne uitreik oor enige aspek van die Wysigingswet op Intellektuele Eiendomsreg, 2013, met inbegrip van—

- (a) beskerming van tradisionele modelle;
- (b) die databasis, vir sover dit met tradisionele modelle verband hou;
- (c) die Nasionale Trust en Fonds, vir sover as wat dit met tradisionele modelle verband hou;
- (d) die Raad, vir sover as wat dit met tradisionele ontwerpe verband hou; en
- (e) die geskilbeslegtingsprosedure soos in artikel 53I uiteengesit.”.

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Kort titel en inwerkingtreding

15. Hierdie Wet heet die Wysigingswet op Intellektuele Eiendomsreg, 2013, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.