



OCTOBER 2009

TALK

## CEO Corner

### It's vital to ensure domestic and international competitiveness

**AS this is the penultimate article I will write for PrinTALK in my capacity as PIFSA's CEO, I would like to return to a subject that has been one of my greatest concerns while I have been in this position. It's the issue of ensuring that our industry (printing, packaging and newspapers) has sufficient skilled people to ensure its domestic competitiveness, its international competitiveness, its survival and growth.**

The two biggest areas of challenge have been competitively-priced inputs and skilled people. Since I joined the Federation in January 1989, it has successfully submitted several tariff reduction applications to ITAC and its predecessor, the Board of Tariffs & Trade. These tariff reductions saved our industry millions of rands as a result of the import parity pricing policies of certain suppliers, and, although they were strongly opposed by the Paper Manufacturing Association of South Africa, the strength of our industry standing together and the logic of our submission eventually won the day.

There are still a few battles to be fought, but someone other than me will lead these. I have absolute confidence that the depth of leadership and commitment within the Federation and its Chambers will ensure the correct outcome. It's just a pity that these battles have to be fought with suppliers who sometimes appear to be protecting short-term margin rather than seeing the potential of increased volumes as our industry improves its competitiveness. In some cases, I believe this is a result of globalisation where suppliers are concentrating on the really big markets for volume, and taking as much margin as possible from smaller markets such as South Africa. This is absolutely understandable, but not acceptable to PIFSA.

The second part of the competitive 'equation' is that of skilled people. The tragedy of the closure of the College goes far beyond the loss of the dedicated and skilled people who selflessly ran the College and introduced a generation of young people to an exciting and fruitful career. The tragedy is that while the loss of this resource may not be felt immediately, because of the current recession, it will be felt in years to come. We will never know how many talented young South Africans who could have contributed to the future success of our industry are now starting careers in other fields and other industries.

The defamation action brought by PIFSA, the College and myself against the previous CEO of MAPP SETA, Melanie Bernard-Fryer, was settled out of court and the terms of the settlement are confidential. However, what is not confidential is Mrs Bernard-Fryer's apology to each of the parties which states:

**1. I hereby apologise for all statements I made at meetings and/or in discussions with various people, including journalists, over the period July 2006 to date, which:**

**Gave rise to the publication of untrue, injurious and defamatory matter and/or innuendo of and concerning each of you in the Press and Parliamentary Sub-Committee;  
Damaged and injured your reputation and personas;  
Insulted each of you;  
Prevented or inhibited the training of persons in the printing industry.**

**2. I hereby unreservedly apologise for the publication of all untrue and defamatory matter concerning each of you and the damage and injury it has caused.**

**Yours faithfully  
(Signed Mrs M Fryer)**

While it's personally satisfying to be vindicated, nothing can change the effect of the actions that emanated from the erstwhile head of MAPP SETA, which 'prevented or inhibited the training of persons' in our industry, and eventually culminated in the closure of the College as a result of lack of funding from the SETA. The atmosphere of animosity towards PIFSA, the College and myself generated within MAPP SETA during the tenure of Mrs Bernard-Fryer still appears to exist in certain quarters. This is one of the reasons that the Federation continues to pursue (and I continue to believe in) a move to a more appropriate SETA.



**Chris Sykes,  
CEO**

# Copyright explained

cop·y·right /kəˈpɪrɪt/  
noun  
the exclusive legal right, given to an author, performer, film, or record literary, a  
to the same.

As a result of recent enquiries regarding copyright, Erich Kuhl, PIFSA's director, commercial and technical services, prepared this overview. While it may not provide ultimate answers, legal advice and precedent guide the statements made in the article. PIFSA welcomes comments.

**A PRINTER makes his livelihood by reproducing or copying, but what may he legally copy? When he's handed a set of positives, CD, DVD or PDF, or a digital download of a brochure, catalogue or any other printed work, it's assumed that the customer is the legitimate owner of the copyright, or a licensed agent of the owner.**

To safeguard against infringing the owner's rights, the printer should request proof of ownership, but this could lead to relationship issues and is often untenable. On the other hand, if the printer is given a printed copy which he scans in or photographs in order to reproduce it, this could be a blatant infringement of copyright, and the printer has every right to demand proof of ownership.

The same applies where the printer is shown someone else's product and is requested to adapt it. In such a case, the court would assess how much creativity, skill, labour and effort went into the adaptation. Regardless of whether the new work is an adaptation or a copy of something, it is in itself a new original work and the author holds the copyright therein.

Of course, it's a major task for a printer to ensure that his customer is the copyright owner or licensee of every job he's required to print, which is why most printers choose to ignore this aspect, but leaves them wide open to legal action. As a safeguard, printers quotations could include a clause to be signed by the customer to certify his status as copyright owner or licensee. This would offer limited indemnity to the printer, being proof that he endeavoured to ensure that his customer had the right to request such reproduction.

The not so simple answer is copy **nothing** without express written permission from the copyright owner.

## The Copyright Act

The first South African copyright legislation was Act No 9 of 1916, followed by Act No 63 of 1965. The present Copyright Act No 98 of 1978 came into force on January 1 1979, and has been amended several times, the latest amendment being in 2002. These dates may be important to establish the existence of copyright in some works, because in some cases it's 50 years after the death of the author

– see sub-heading Duration of Copyright.

In terms of the Act, no registration is required or provided for in South Africa, except for cinematograph films, which fall under Act No 62 of 1997, but which also automatically qualify for copyright.

When a work which is eligible for copyright is created, copyright exists automatically as long as the author is a 'qualified person' – a South African citizen or resident or a body incorporated under South African law. Works of architecture erected in South Africa and other artistic work incorporated in a building or permanent structure are eligible regardless of whether the author was a qualified person.

## Works protected under the Copyright Act

Section 2(1) of the Copyright Act states that the following original works are eligible for copyright and Section 1 defines these as follows, regardless of quality and form of expression:

- Literary works - novels, stories, poetical works, dramatic works, stage directions, cinematograph film scenarios, broadcasting scripts, textbooks, treatises, histories, biographies, essays, articles, encyclopaedias, dictionaries, letters, reports, memoranda, lectures, speeches, sermons, tables, compilations including those of data stored on a computer but excluding computer programs.
- Dramatic works - choreographic work or entertainment in dumb show and scenarios or scripts if reduced to the material form in which they are to be presented, but excluding cinematograph films.
- Artistic works - paintings, sculptures, drawings (including diagrams, maps charts, plans), engravings (including etchings, lithographs, woodcuts and prints), photographs, works of architecture (models or buildings), other works of craftsmanship.
- Photographs - any product of photography or analogous to photography excluding cinematograph films.
- Published edition - the first print by whatever process of a particular typographical arrangement of a literary or musical work. The Act provides that the works are eligible if they are original. Originality does not

necessarily mean novelty or uniqueness, but it should have emanated from the author and been created using skill, creativity, labour and efforts. It is also required that a work must be written down, recorded, digitised or otherwise reduced to material form. Thus nobody can claim to hold the copyright of an idea.

The works most often disputed or questioned by PIFSA members are literary and artistic works, business forms and published editions. It has been argued that a simple form such as an invoice can be generic and that nobody can claim authorship or copyright, but the courts have challenged the validity of such statements using the above criteria.

## Authorship and ownership

Authorship should not be confused with ownership which may vary.

The author of a literary, musical or artistic work is generally the person who first makes or creates the work; for a photograph it is the person responsible for the composition of the photograph; for a published edition it is the publisher of the edition.

The author has the right to claim authorship in a work and to object to any changes to the work if it was prejudicial to the author's honour or reputation, even if the copyright of the work has been transferred.

As a rule the ownership of copyright vests in the author; the copyright in a literary or artistic work made by an author employed by the proprietor of a newspaper, magazine or the like, belongs to the proprietor.

In addition a person who commissions a photograph, painting or drawing of a portrait, making of gravure, a cinematograph film or a sound recording, and pays for it pursuant to the commission, will be the owner of the copyright subsisting in the work produced.

For all works not falling within the above, which are made during an author's employment under a contract or apprenticeship, the copyright will be owned by the employer.

This would apply to a design or page layout commissioned or ordered by an employer as contemplated above, but an agency or design company providing material to the printer for reproduction would be the owner of the copyright.

It can also be argued that a customer requiring such a service from a printer is the employer by default, but there has to be a contract to that effect. An offer and acceptance of a quotation could be deemed to be contractual, whether reduced to writing or not.

It is important to note that copyright is transferable as movable property by assignment, testamentary disposition or operation of law, but, to be effective, an assignment of copyright must be in writing and signed by the assignor.

## Marking and duration of copyright

The Act does not prescribe marking, but when a literary, musical or artistic work is marked

with the author's name; such person shall be presumed to be the author unless proved otherwise.

A copyright warning such as the copyright sign ©, together with the author and copyright owner's names and the year it was created or published, should serve as a warning to the potential infringer.

For literary, artistic and musical works, copyright subsists for the lifetime of the author plus 50 years. For other works, it is 50 years from the end of the year in which it was first produced or made available.

Any use of a work without the express authorisation of the owner, whether for gain or not, constitutes an infringement and judicial proceedings can be instituted to obtain relief. This could initially be an interim interdict, followed by a claim for damages, normally including the cost of legal counsel.

An example to consider is the 1998 case of *Accesso v Allforms* – where there was an application to restrain Allforms (later the Formax Paper Group) from infringing the applicant's alleged copyright in a computerised medical account form used for a specific software programme. The judge ruled that the form did merit protection as a literary compilation, even though the headings and typographical material were commonplace. The layout for the form had required skill, judgement and labour by the author and it was found that the respondent was the proprietor of the copyright and the parties were ordered to pay their own costs.

The judge confirmed that a printer/designer designing a form from a blank computer printout of the software requirements, without referring to the previously printed form, would hold copyright in this newly designed form. It is imperative that proof, in the form of sketches, printouts and proofs, be kept for at least five years.

Spoor & Fisher offered some guidelines in 2002. The *Accesso* case made it clear that it's possible for copyright to subsist in a form, which may not apply to all forms. The advice was also confirmed to be correct. It is, however, important that new work is created by someone who has not seen a pre-existing work otherwise it could be said that he/she created new work from memory, thus copying it.

There have been no major copyright infringement cases affecting designers or printers in South Africa since the above.

**Editor's note: Many of the above facts and statements were compiled by PIFSA using an update by Esme du Plessis of Adams & Adams as published in the Business Blue-Book of South Africa, as well as personal interaction with the author and Dr Owen Dean of Spoor & Fisher, both of whom have advised and assisted PIFSA members in the past. Contact Erich Kühl [ekuhl@pifsa.org](mailto:ekuhl@pifsa.org) for more information.**



## More on the Air Quality Act

Following the article in the August issue of PrintTALK revealing the fact that printing works are to be included as a listed activity in terms of the Air Quality Act (AQA), Garlicke & Bousfield submitted a joint representation to the Department of Environmental Affairs on behalf of PIFSA, PACSA and the PCA.

They included the following comments:

### Procedural Objections – Consultative Process

- Printing was not a scheduled process under the APPA and was not regulated in terms of the APPA
- The various processes and diversity in technology in the industry are relevant when considering the definition proposed in the notice as well as issues relating to technical evaluations.
- At September 2007 printing works were not considered a listed activity, nor did they form part of the emission standard-setting process conducted during February 2008 and May 2009, nor were they invited to participate. Printing works appear to have been an 11th hour inclusion in July 2009.
- No forewarning was given to the printing sector by any environmental department, nor was any reference made to the printing or ink manufacturing industry by SAAQIS.
- Other major industries that appear as listed activities were engaged with Government (DEAT) as early as 2007 and participated in the standard-setting process. The printing industry was only made aware of the intention to list printing works during June 2009.
- The printing industry is not a manufacturer of chemicals but only a user and should not be included as a sub-category under the Chemical category.

### Technical Objections and Comments

Comments made should not be construed to be conclusive or to identify all significant technical or scientific issues. Observations are only preliminary given the period of time afforded the industry for reply.

- The industry asks the Department to provide the rationale behind the proposed threshold of 25 tons/annum solvent usage.
- Was the threshold based on health or environmental protection values or on risks assessment? (EC Directive 1999/13/13 cites minimum solvent consumption thresholds of between 15 to 30 tons/annum depending on activity/process.)
- Does the threshold take into account solvent recovery/recycling processes and is this offset against total solvent input.
- Why has the Department used a threshold of solvent consumption rather than emission mass flow?
- No definition of solvent has been included in the notice.
- Given the significant variability in the industry (site, discharge characteristics, receiving environment, etc) several assumptions would have to have been made to determine appropriate emission levels. Comment can only be made after review of any risk assessment procedures made by the Department as well as assumptions made.

Please address further comments to Louise Moralee ([lmoralee@pifsa.org](mailto:lmoralee@pifsa.org)).

## PIFSA move complete

THE move to Gallo Manor is now complete and PIFSA's National Office and Central Chamber staff are adjusting to different traffic patterns.

With the new surroundings, some exciting projects are sure to evolve, so keep reading PrintTALK to keep up with developments and workshops planned for next year.



### PIFSA's new address and telephone numbers:

**The Braids**  
Unit D, Ground Floor  
113-115 Bowling Avenue  
Gallo Manor 2191

**PO Box 1396**  
Gallo Manor 2052

**Switchboard 011 2871160**  
(Central & National)  
**Fax 011 287 1179 (National Office)**  
**Fax 011 2871178 (Central Chamber)**

### YOUR PIFSA REGIONAL CONTACT DETAILS:

**BORDER CHAMBER:** *Sharonne Dewing*  
**Tel:** 043 7022123 | **Fax:** 043 7435156  
**E-mail:** [sharonne@dispatch.co.za](mailto:sharonne@dispatch.co.za)

**CAPE CHAMBER:** *Ken Leid*  
**Tel:** 021 5951367 | **Fax:** 021 5951376  
**E-mail:** [cape-chamber@pifsa.org](mailto:cape-chamber@pifsa.org)

**FREE STATE and NORTHERN CAPE CHAMBER:** *W Hauptfleisch*  
**Tel:** 058 4812105-7 | **Fax:** 058 4814267  
**E-mail:** [admin@oranje.co.za](mailto:admin@oranje.co.za)

**KWAZULU-NATAL CHAMBER:** *Geoff Warren*  
**Tel:** 031 7058744 | **Fax:** 031 7054408  
**E-mail:** [kzn-chamber@pifsa.org](mailto:kzn-chamber@pifsa.org)

**NORTHERN CHAMBER:** *Lana Human*  
**Tel:** 087 8053675  
**Fax:** 012 6871317 or 086 6275175  
**E-mail:** [northern-chamber@pifsa.org](mailto:northern-chamber@pifsa.org)

The views expressed in PrintTALK are, unless otherwise stated, not those of the Printing Industries Federation of South Africa (PIFSA). Everything in PrintTALK and any attachments relating to the official business of PIFSA or any affiliated or administered Association is proprietary to PIFSA. Whilst all reasonable steps are taken, PIFSA cannot assure that the integrity of this communication has been maintained or that it is free of errors.