

Protecting intellectual property so you benefit

JAN 31, 2011 | PENWELL DLAMINI | [0 COMMENTS](#)

ANYONE can have an innovation but it is important to know how to protect that innovation from being infringed on or stolen

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Sizwe Snail, an attorney practising in cyber-law and intellectual property, says you don't protect an idea - you protect the "thing that is protectable in law by way of patent, design, trademark, domain name, or a work that is subject to copyright".

Snail says copyright includes literary works (such as novels and poetry), musical and artistic works, sound recordings, cinematograph films, broadcasts and computer programmes.

"Copyright comes into being automatically as long as all elements of the Copyright Act are present and no registration is required. In respect of cinematograph films, registration is possible but it is not necessary for copyright to exist," he says.

"Copyright is automatically conferred on a work that is eligible for copyright at the time when it is created, provided that certain requirements are met," he says.

These include that there must be a work, the author should be a qualified or juristic person, the work should be first published in or made in South Africa and that it is not contra bonos mores (contrary to good morals).

"The registration of a trademark does not necessarily confer an absolute right to use the mark. Prior rights to a relevant mark, recognised by law, may have been secured in ways other than by registration," says Snail.

Domain names, which have partial origin from trademarks, are also protectable in terms of trademark law and the Electronic Communications Transaction Act. Domain names have come to be recognised as property - conveying the brand by which a company or individual is recognised.

Attorney Precious Mnisi says: "A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem and provides protection for the owner."

The protection is granted for 20 years, subject to payment of renewal fees.