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## ARTICLE

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### **CAREFUL ABOUT THAT 'GREAT BUY' – IT MAY COST YOU DEARLY**

There is no doubt that the use of intellectual property in the global marketplace is a major facet of business today and its collective worth runs into figures which are uncountable. So what exactly is intellectual property and why is it increasingly gaining recognition, particularly for company asset registers and balance sheets?

Best described, intellectual property -- or simply IP -- refers to the creations of the mind. IP provides a powerful tool and valuable means if used correctly within business; however you must either own the IP or have permission to use it. These creations can be found for example, within inventions, literary and artistic works, symbols, names, images and designs which are used in commerce and they are in deed what actually cause the commerce 'wheels to spin', generating lots of money.

The World Intellectual Property Organisation (WIPO) divides IP into two categories, namely *Industrial Property* which includes inventions, patents, trademarks and industrial designs; whilst *Copyright* covers amongst other, literary and artistic works, architectural designs including the rights attached to performing artists and producers in their performances and programmes.

Indeed, as people have realised the importance attached to the inherent value of IP, so many have scrambled to apply themselves and their talents with the hope that their creations will provide them some form of recognition, be this monetary or not. Of course not all individuals share the same values of good ethics and hard work and they will steal the creations from the true owner, claiming these to be their own.

Criminals clearly understand the value attached to IP and they will exploit the IP which does not belong to them, simply because there is mega value attached to this quick form of crime, also because the detection of IP fraud and fake goods is most often delayed, exacerbated by relatively few convictions. International reports suggest that countries ranked with the highest IP violations include the US, South Korea, Italy, Spain, the UK, Germany, Slovenia, the UAE, Kuwait and China. Whilst South Africa is still relatively low in the rankings -- rated 16<sup>th</sup> out of the 20 Top Countries -- when compared to those countries experiencing all forms of counterfeiting and pirate activities, the DOIP Security Counterfeiting Intelligence Report cites the 10 most popular counterfeit items to be; financial instruments, entertainment and software, identification, clothing and accessories, food and alcohol, drugs and medical, industrial goods and supplies, jewelry and watches, cigarettes and tobacco products, electronic / computer equipment and supplies. The report further reflects the top five brand counterfeits to be Nike, Microsoft, Louis Vuitton, Adidas and Prada.

So, whether you are caught in a scam or you have purposefully become embroiled in --amongst other -- counterfeit currency, DVDs, software or even handbags; you need to be aware that being caught in possession of products such as these for example, where your ownership is not *bona fide*, could result in serious repercussions. The Trade Marks Act, including other Acts such as the Counterfeit Goods Act, the South African Copyright Act, Publically Financed Research Act, Technology Innovation Agency Act; all serve to protect the inventors -- being the true owners -- of their products in the same way as the common law and statute protects other forms of property.

Whilst these Acts are in place, and still of concern, the South African Copyright Act -- although repeatedly enhanced -- continues to retain provisions that either neutralises South Africa's international obligations or seriously undermines the IP owner's ability to protect their rights.

To illustrate this point, in SA, the end-user who pirates business software is still not seen, neither treated as a criminal offence. Such where civil damages are brought against the perpetrator who

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infringe the copyright of software, fines that are levied against the perpetrator are in many cases less than the actual costs of the licensed software. Accordingly, the light finger-raps need to be seriously re-dressed by our legal authorities to ensure heavier sanctions are imposed to further deter criminals. Moreover, there is concrete evidence that these criminals who trade in fakes and violate the IP ownership rights, have proven links with other organised crime which undermines legitimate businesses and employment.

In conclusion, an internet law expert, Reinhardt Buys suggested that IP theft was becoming increasingly prevalent in South Africa, observing that “the problem in South Africa was not so much counterfeit software, music and DVDs, but rather the rapid increase in the use of peer-to-peer networks to download illegal content.”

ENDS

WORDS: 746

Further Media Information:

Terry Booyesen  
CEO: CGF Research Institute (Pty) Ltd  
Office: (011) 476 82 64 / 1 / 0  
Cell: 082-373 2249  
Fax: 086 623 1269  
Email: [tbooyesen@cgf.co.za](mailto:tbooyesen@cgf.co.za)  
[www.cgf.co.za](http://www.cgf.co.za)  
[www.corporate-governance.co.za](http://www.corporate-governance.co.za)

Reinhardt Buys  
Senior Manager (Technology Law)  
Deloitte Legal  
Office: (011) 209 8404  
Cell: 074-464 0686  
Email: [rbuys@deloitte.co.za](mailto:rbuys@deloitte.co.za)  
[www.deloitte.co.za](http://www.deloitte.co.za)