

the skill and effort of the specific author and was not copied from any earlier work. It would also be necessary to establish that the author was a qualified person for the purpose of the Copyright Act although, because of international agreements, any author who is resident in, domiciled in or a citizen of any of the major industrial countries of the world would be entitled to protection in South Africa. One must assume that any author would be qualified for that purpose. Copyright in respect of the letter, if it exists, would extend for the life of the author and for 50 years from the end of the year in which the author dies. If it can be shown that the specific form of the letter L was created long ago, copyright may not subsist.

5. With regard to the probability of copyright subsisting in the specific letter, the Courts would look at the specific letter and the manner of its creation and determine whether, in the circumstances, the work is of sufficient artistic merit to justify copyright protection. If the author used an existing font or early lettering as a basis for creating the specific letter and the differences are limited, the courts may well find that there is insufficient merit for copyright to subsist. However, if the specific letter is completely different from anything that went before and was created with considerable skill, copyright may subsist. It does seem unlikely that a Court would hold that copyright subsist in a specific letter in a font unless considerable skill went into its creation. However, without a full knowledge of the background, which is clearly not readily available, it is not possible to make a clear assessment. Normally one would have doubts as to whether copyright would subsist in a single letter of this nature.
6. Furthermore, if a specific author was responsible for creating a complete alphabet in the specific font and the creation of the complete alphabet took substantial skill and effort, copyright may subsist in and may be claimed in the complete alphabet. However, even if copyright does subsist in the full alphabet, this does not mean that copying of a single letter would result in copyright infringement. In order for there to be copyright infringement, a substantial part of the work concerned should be appropriated. The single copying of one letter from an alphabet would probably not meet this requirement if copyright is claimed in the full alphabet as opposed to a single letter. Therefore, even if copyright is claimed in respect of the full alphabet, any person claiming copyright infringement would probably have to prove subsistence and infringement of copyright in the specific letter, on the basis mentioned above, to succeed.
7. There is necessarily uncertainty in a matter such as this and no guarantees can be given. In respect of the logo, the safest course of action would be to ask a calligrapher to draw a letter "L" of the general type in question in a circle in order to create the type of impression that you require. It would be preferable for the calligrapher not to be shown the existing "L" so that there cannot be any claim of copying. Copyright infringement cannot arise without copying. Even if the calligrapher, without being aware of the existing "L", creates a letter that is very

similar to the existing ones, we would then be able to show that it was created without copying and, therefore, there could be no copyright infringement.

8. In accordance with your instructions, this letter will be given to Ike Papageorge so that he can bring it to the meeting for general discussion.

Yours faithfully
ADAMS & ADAMS

A.J. SMITH
/jsf