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What is a copyright?

You have authored a best-seller novel or book, created a computer program, created a music piece, a work of art, a building model in architecture, or taken a photograph – these are either literary or artistic works that one can have a copyright over.

In terms of the Copyright and Neighbouring Rights Act, (“**The Act**”) “copyright” in relation to a work means the exclusive right, by virtue and subject to the provisions of this Act, to do, and authorise other persons to do, certain acts in relation to that work in Botswana or in any other country to which the relevant provisions of this Act extends.

Copyright is effectively a right which attaches to the personality of the author.

An interesting question which has yet to be tested is whether such personality extends beyond humans. With the advent of smart animals and Artificial Intelligence, the question becomes a little more complicated.

In fact, the American courts have had to grapple with the copyright of a selfie that was taken by a monkey. Does the owner of the camera have a copyright over the photograph? – The court found that he was not the author of the photograph, and therefore could not own the copyright though he might have created a situation which enabled the monkey’s selfie. Could the monkey own a copyright over its selfie? – the US district court found that “author” cannot be defined to include non-humans in its Act.

The Act predicates its definition of “author” as “a person who has created a work...” Like the USA, our Act basically restricts author to humans.

It can be foreseen that this question of extending “author” to non-humans will arise in future in relation to literary or artistic works by Artificial Intelligence.

Stay tuned as we explore more on copyrights.

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