Lost in the Labyrinth of Lexicography – Labours of a Lawyer

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Abstract: The work of the Centre for Legal Terminology in African Languages comprises the compilation of a legal dictionary where various legal terms are defined and translated into the different indigenous African languages. During the first phase of the Centre's work a selection is made of English terms in the domains of criminal law and criminal procedural law. These terms are then defined and translated into the first target language, namely Afrikaans. This article deals with the lexicographical and legal problems encountered by the Centre during this phase as seen from a lawyer's perspective. On the lexicographical side the problems relate to demarcating the domains, determining a target group, the availability or lack of sources and indicating how the Afrikaans translation helps in establishing the correct meanings of terms. The legal problems encountered relate mostly to copyright, but brief reference is also made to the aspect of civil liability which might arise from the use of the completed dictionary.

Keywords: CENTRE FOR LEGAL TERMINOLOGY IN AFRICAN LANGUAGES, COPYRIGHT, CRIME, CRIMINAL LAW, CRIMINAL PROCEDURAL LAW, DEFINITION, DICTIONARY, INDIGENOUS AFRICAN LANGUAGES, LAW, LEGAL LIABILITY, LEGAL TERM, LEGAL TERMINOLOGY, LEXICOGRAPHY, PRODUCT LIABILITY, TRANSLATION

Opsomming: Verdwaal in die doolhof van leksikografie — die stryd van 'n regsgeleerde. Die werk van die Sentrum vir Regsterminologie in Afrikatale behels die samestelling van 'n regswoordeboek waarin verskillende regsterme gedefinieer en dan vertaal word in die verskillende inheemse Afrikatale. Gedurende die eerste fase van die Sentrum se werksaamhede word 'n keuse van Engelse terme op die terrein van strafreg en strafprosesreg gemaak. Hierdie terme word dan van definisies voorsien en in die eerste doeltaal, naamlik Afrikaans, vertaal. Hierdie artikel handel oor die leksikografiese en regsprobleme wat deur die Sentrum ervaar is gedurende hierdie fase van die werk, soos gesien vanuit 'n regsgeleerde se perspektief. Aan die leksikografiese kant hou die probleme verband met die afbakening van die terreine, die bepaling van 'n teikengroep, die beskikbaarheid of gebrek aan bronne asook 'n aanduiding van hoe die Afrikaanse vertaling meehelp om die korrekte betekenis van terme te bepaal. Regsprobleme wat ervaar is, hou grotendeels verband met outeursreg, maar daar word ook kortliks verwys na die aspek van siviele aanspreeklikheid wat mag voortvloei uit die gebruik van die voltooide woordeboek.

Sleutelwoorde: DEFINISIE, INHEEMSE AFRIKATALE, LEKSIKOGRAFIE, MISDAAD, OUTEURSREG, PRODUKTEAANSPREEKLIKHEID, REG, REGSAANSPREEKLIKHEID, REGS-

TERM, REGSTERMINOLOGIE, SENTRUM VIR REGSTERMINOLOGIE IN AFRIKATALE, STRAFPROSESREG, STRAFREG, VERTALING, WOORDEBOEK

1. Introduction

In the late 1980s the idea arose to make legal terminology more accessible to the average South African citizen. At that stage nobody involved in the process realised what really lay ahead. The aim was somewhat idealistic: to compile a dictionary containing various legal terms with their definitions and at the same time to translate these terms and definitions into one or more of the various indigenous African languages. The Centre for Legal Terminology in African Languages was established to organise and co-ordinate the work. The background to the formation of the Centre, its objectives, working procedure and some of the original problems encountered, were related in an earlier edition of *Lexikos* and will not be repeated here. It is, however, necessary to refer briefly to the various stages in the working procedure as mentioned by Alberts (1997: 184).

The first phase comprised the compilation of lists of legal terms in English in the domains of criminal law and criminal procedural law. Definitions were then provided for terms with a specific legal meaning and, where necessary, examples of how the terms should or could be used, were given. The English terms, their definitions and examples were then translated into Afrikaans.

During the second phase the English-Afrikaans term list was edited to conform to terminological and terminographical standards, entered into a computer and adapted in accordance with the requirements of the database system.

The third phase involved the translation of the various terms and their definitions and examples into an indigenous African language. At present the Centre is working on Sepedi but the idea is to extend the work to other indigenous languages during the fourth and further phases of the work.

Each phase in the work process has unique problems and pitfalls, requiring caution by the researcher. In this article an attempt is made to examine the first phase of the work where terms are selected and defined in the source language and simultaneously translated into Afrikaans, the first target language. During this phase law and lexicography inevitably overlap. For the sake of convenience, however, this article will first deal with the problems that are of a more lexicographical nature (as seen from a lawyer's perspective), and then refer briefly to some problems also encountered in the legal field. The information and impressions provided are those of a lawyer from the viewpoint of a lawyer.

2. Problems of a Lexicographical Nature

2.1 Selection of Legal Terms in the Source Language

As stated by Alberts (1997: 183) "at this stage, the Centre for Legal Terminology in African Languages only concentrates on providing African language equivalents in the subdomains of *criminal law* and *criminal procedural law* because of the dire need in these legal fields".

Although such a demarcation seems simple and straightforward enough, it provided the first obstacle to be overcome in the work of the Centre, namely determining the ambit of the fields of criminal law and criminal procedural law. In its most simplistic form criminal law can be described as that "branch of the law that specifies what conduct constitutes a crime and establishes appropriate punishment for such conduct" (Handler 1994: 119). Criminal procedural law then, according to Snyman (1995[3]: 5), is "the procedure by which alleged criminals are brought before court and tried for their alleged offences". From these descriptions it is immediately evident that the concepts of "crime" and "offence" are crucial. For a layperson the terms are associated with bloodshed, murder, rape, robbery, theft, et cetera, as well as the accompanying gory details.

From a lawyer's perspective the scene is somewhat different. A lawyer starts from the basic premise that the function of the law is to solve social conflicts and thereby to create order in a community (Hosten et al. 1977: 16). This is done by defining the interests of people, balancing them with those of others and harmonising them so that one person's interests does not encroach on another's. Whenever the legal equilibrium is disturbed, the legal system attempts to restore it by attaching enforceable consequences to the conduct that originally disturbed the harmony. This compulsory restoration of the disturbed legal position is called "retribution" and can take the form of punishment or of compensation for damages caused. Crimes are forms of conduct that are not only committed against the individual, but disturb the public order as well. Mere compensation of the injured individual does not provide adequate retribution. The retribution provided has to satisfy the needs of the community. Punishment by the state as representative of the community is therefore the most appropriate solution to the disturbed legal position. At this stage it ought to be clear that from this perspective virtually any act has within itself the seed to develop into a crime. This means that the boundaries of the field of criminal law are virtually indeterminable.

This is why one finds that sometimes a crime is defined in such a way that the definition seems all-encompassing, namely as "an act or omission which, whether or not it is morally wrongful or is deemed a wrong to an individual and civilly actionable by him for compensation from the harm done to him, is legally deemed an offence against the State or the community or the public and is punishable, as a deterrent to the offender and others, for the sake of public

order, peace and well-being and in the interest of society" (Walker 1980: 313). In nonlegal dictionaries, such as Hanks (1989[2]: 369), the definition stands out for its brevity: "an act or omission prohibited and punished by law". In practice lawyers apply a more conservative approach by retaining only those elements in the definition that are absolutely necessary. Thus a crime is generally defined as "an unlawful blameworthy human act or omission prohibited and punished by law".

For the sake of those readers unfamiliar with the law, a brief explanation of the meaning of the various terms in this definition follows below.

(1) Human act or omission

From what has already been said, it is evident that the legal equilibrium can only be disturbed by some form of human conduct. A crime must therefore consist of an act. Mere thoughts or even decisions to commit a crime are not punishable (Snyman 1995[3]: 26). The law does not limit the meaning of "act" to positive conduct only, but includes negative conduct as well. By negative conduct is understood the failure to act where a person is legally obliged to do something (Snyman 1995[3]: 26) — in legal terminology known as an omission. A good example of this is the failure to stop at a red traffic light.

(2) Prohibited or punished by law

The requirement embodied in this phrase is called "the principle of legality". It has its origin in a well-known Latin maxim *nullum crimen sine lege* which means "without a law no crime can exist". According to this principle, a person will only be liable if his/her conduct was considered a crime by the legal system at the moment it took place. A person cannot be found guilty and punished by a court merely because the presiding judge is of the opinion that the particular conduct of which the person is accused, is immoral or damaging to the community or that the culprit "deserves" to be punished. A well-defined legal prohibition must exist indicating exactly what type of conduct is not permissible. In short, this means that the man/woman in the street must be able to determine what is expected from him/her.

This principle has certain serious consequences for the compilation of a legal dictionary, as will be explained below. At this stage it is important to note that we do not have a codified criminal law system in South Africa. This means that we do not have a specific written source listing each and every form of conduct that is regarded as a crime.

To determine what constitutes criminal conduct in South Africa, one has to consult two sources, viz. common law and statutory law. Common-law crimes encompass those crimes that have existed within the community from time immemorial and which relate to conduct that has traditionally been

regarded as loathsome. They have no specific date of birth, nor can one ascribe their origin to a specific government. Everybody within a given community is normally aware of the fact that these forms of conduct are not acceptable. Common-law crimes therefore form part of our legal inheritance and legal tradition. Examples would be crimes such as murder, theft, assault, rape, et cetera. Common-law crimes developed from the needs of the community. It is therefore logical that changing requirements can lead to changes in the definitions of these crimes in order to adapt them to altered circumstances. Such adaptation cannot however be done indiscriminately when the law is applied in court, as it would violate the principle of legality and members of the public would not know which forms of conduct should be avoided. An example illustrates this: theft has traditionally been defined as "the wrongful taking of any movable property without the consent of the owner, with the intention on the part of the taker to appropriate it" (Milne et al. 1951[3]: 813). In terms of this definition one requirement was that the article stolen should be something that could be physically removed. Banknotes and coins comprise such articles and could therefore be stolen. Due to the development of technology and computer systems, it is nowadays possible to transfer credit from one bank account to another simply by altering various entries in the records. In principle the effect is precisely the same as if money had physically been removed from one person's possession and handed to another. The legal system merely adapted the existing definition to include these forms of conduct under the definition of theft. Common-law crimes can therefore make provision for situations which are not yet known and a prospective criminal can be forestalled. The only problem from the viewpoint of a dictionary compiler is to state in words what the collective mind of the community understands the crime to be. This is why one finds that more recent definitions of common-law crimes are normally long and burdensome, as is evidenced by the latest definition of theft given by Snyman (1995[3]: 445):

"A person commits theft if he unlawfully and intentionally appropriates movable, corporeal property which

(a) belongs to, and is in the possession of, another;

(b) belongs to another but is in the perpetrator's own possession; or

(c) belongs to the perpetrator but is in another's possession and such other person has a right to possess it which legally prevails against the perpetrator's own right of possession

provided that the intention to appropriate the property includes an intention permanently to deprive the person entitled to the possession of the property, of such property."

Another problem with regard to the common law is that adaptations cannot occur *ad infinitum*. Somewhere a line has to be drawn. If one extends the definition of theft to include theft of credit, would this imply that one could extend it even further to include an abstract concept such as the theft of electricity or even further still, to include the theft of information from a computer

network? If certainty is also a requirement for a legal system to be successful, mere extensions cannot be regarded as the ultimate solution. Other arrangements have to be made.

It is here that the state enters into the picture in the guise of the legislature. As and when developments create the need for further forms of conduct to be declared crimes, the legislature merely determines this in an Act of Parliament. Because the new crime created in the Act is as yet unknown to the community, the wording of the Act must state precisely what is prohibited. An interpreter of the statute is limited in his or her interpretation by the wording of the Act. What is problematic about such a statutory definition is the fact that criminals are normally one step ahead of the law. As these new definitions have not yet stood the test of time, loopholes are usually easy to find, with the result that such definitions have to be amended time and again. Where the definition of such statutory crimes are incorporated in a dictionary, the precise wording, regardless of how comprehensive it may be, must be provided as well as reference to the specific statute where the definition appears. The compilers of the dictionary furthermore run the risk that such definitions may become outdated even before their work is published. A well-known example is the case relating to Communism. The South African Communist Party was declared an unlawful organisation in terms of section 4 of the Internal Security Act 74 of 1982. Promoting the aims of this organisation was at that stage considered a punishable crime. Due to the change in political environment, the SACP was declared lawful and the bulk of the Internal Security Act was repealed because it no longer reflected the views of the ruling government. A definition which regards the promotion of the aims of Communism as a crime, would therefore be outdated.

An interesting example encountered by the Centre whilst defining various crimes was the case of "bigamy". Traditionally bigamy has been regarded as a common-law crime in South Africa and was also punished as such, although exceptions were made for people married in terms of indigenous or customary law. The new Constitution of the Republic of South Africa 108 of 1996 had an impact on this view. Provision is made in the Constitution for the development and application of indigenous (customary) law alongside the existing common law (s 39(2)). It is also provided that there may not be any form of unfair discrimination against individuals or groups of people on the ground of race, gender, et cetera (s 9). One can now argue that if one man in a country has the right to have more than one wife, whereas another man in the same country may have only one, this constitutes unfair discrimination. (I refrain from stating against whom the discrimination is exerted.) In this transitionary period how should one define bigamy in an explanatory dictionary? Is it "marrying more than one wife which is regarded as a crime by a certain section of the community", or is it "having more than one wife which is an acceptable practice for part of the community" or should one rather exclude all references to discrimination by stating that bigamy means "the criminal conduct or noncriminal

conduct (depending on the type of marriage that was solemnised) of a person who has more than one marriage partner". At least such a view includes homosexual relationships and makes provision for those feminists who are of the opinion that women should also have the right to be married to more than one husband!

(3) Unlawfulness

A third requirement that must be present before conduct will be regarded as criminal, is the aspect of unlawfulness. The mere fact that an act corresponds with the prohibition in the definition of the crime, does not necessarily mean that such conduct is also unlawful. Consider for example the case where a speed limit of 120 kilometres per hour is set. An emergency occurs and the accused, having no other alternative, exceeds the speed limit to take an ill person to hospital for emergency treatment. Our inherent feeling of what is just and acceptable clearly implies that such conduct should not be regarded as criminal and punishable. Unlawfulness therefore relates to society's views and convictions of what is legally acceptable and right. The moment there is a valid reason for a person to transgress a legal rule, the views of society are that such a person must be excused from liability. Over the years certain of these "reasons" have occurred time and again. They are now so well-defined that people tend to regard them as a predetermined number (*numerus clausus*). The presence of such a "reason" automatically excuses a person from liability for conduct which would otherwise be regarded as criminal. Examples of such reasons are acting in self-defence, cases of necessity, where consent was given, where somebody acts on the order of a superior, or has a right to chastise his/her children. These "reasons" cancel the unlawfulness of a person's conduct and are known in legal terminology as grounds for justification.

(4) Blameworthiness

The mere fact that a person's act corresponds with the prohibition stated in a particular definition and is at the same time unlawful, does not necessarily mean that the wrongdoer is without further ado criminally liable. To be guilty of the commission of the crime, the wrongdoer must also be to blame or, as it is termed in law, "fault" must be present. In its technical legal meaning "fault" relates to the blameworthy state of mind of a person who commits an unlawful act. According to Snyman (1995[3]: 28) "the focus shifts from the act to the actor, that is, X himself — his personal abilities, knowledge, or lack thereof". In terms of the law an offender can be held responsible for his conduct only if it is reasonable to expect him/her to avoid, renounce or stop committing the unlawful act. A mentally ill person or a five year old child who acts unlawfully, cannot be blamed for their actions because they cannot be expected to behave lawfully.

Blameworthiness is therefore dependent on a person's accountability (i.e. his/her mental abilities or state of mind which enables him/her to distinguish between right and wrong and to act accordingly) and his/her attitude (that is whether he/she has acted intentionally or negligently).

Only conduct where all four above-mentioned elements are present can be regarded as criminal and falls within the ambit of criminal law. The question that now arises, is whether the compiler of a dictionary should, when defining a crime, mention all four elements in each definition. Can one limit the definition by merely stating the prohibited form of conduct and assume that the reader will automatically accept that the conduct has to be unlawful and blameworthy as well as prohibited in a specific well-defined legal prohibition? Should one mention the source where the prohibition can be found? As will be indicated later, the legal implications of this decision can be far-reaching.

To answer the questions stated above, it was necessary to decide for which target group the Centre's proposed dictionary would be appropriate.

2.2 Determining a Target Group

The moment we started working on the dictionary, it became evident that there was one important aspect which had been overlooked — there were at that stage only a few legal dictionaries available in South Africa that could be used as basic sources. For the purposes of our work, however, all had serious shortcomings. When talking about legal dictionaries, every lawyer will immediately mention the *Trilingual Legal Dictionary* by V.G. Hiemstra and H.L. Gonin. The name of this work is, however, a complete misnomer. It is not trilingual in the sense that each term provided is translated into three different languages. This work actually consists of three sections, each of which is bilingual. The various sections are English-Afrikaans, Afrikaans-English and then a selection of Latin terms and phrases which are translated into Afrikaans and English. Definitions are only provided in a few selected cases where terms might be problematic.

The *Jurisdiese Woordeboek/Juridical Dictionary* of C.A. Marais consists of a list of English legal terms translated into Afrikaans, and vice versa, without any explanations or definitions. The majority of terms provided are already incorporated in Hiemstra and Gonin's work so that this work cannot really serve as a separate primary source.

A *Dictionary of Legal Words and Phrases* by R.D. Claassen is also available. It is, however, not appropriate for the work of the Centre as it does not provide a broad or general definition of each legal term but merely indicates where reference was made to the specific term in legislation or where it was considered in court decisions.

The *Woordeboek van Regs- en Handelsterme* by J. Smuts and I.J. Smuts is an Afrikaans-English legal dictionary which also provides definitions for the majority of terms incorporated in the work. Its usefulness is once again restricted

— this time due to the fact that the source language is Afrikaans (which is not understood by many of the inhabitants of the country) and the domain limited to legal terms used in commerce.

Other South African legal dictionaries are outdated — all of them date back to the fifties and early sixties — and none of them cover the same field or follow the same approach that we had in mind. At this stage of our work it became evident that an enormous need existed for the type of work the Centre planned. Originally the target group that had been identified as prospective users of the dictionary, was limited to interpreters and translators. We became sure that, due to the lack of sources, this target group would in all probability be far greater than envisaged. A dictionary such as the one we had in mind, would be suitable not only in the courts, but also for use by legal practitioners, compilers of legislation, law students and, last but not least, the man in the street.

Identifying such a broad target group immediately had an impact on our modus operandi. When a legal dictionary is aimed at lawyers only, a definition of a crime, for example, need not contain each element as explained above, but can be limited to the definition of the proscription alone. The definition of the proscription represents only one component of the total definition of the crime. It can be expressed negatively as the definition of the crime minus the requirements of unlawfulness and fault. In the case of statutory crimes the requirement of unlawfulness is very seldom explicitly stated in the definition although it is nevertheless still an implied requirement. The blameworthiness and the form it may take, is in the case of statutory crimes often stated indirectly by means of synonyms or explanatory sentences such as the use of the word "knowingly" which would imply intention. A lawyer is also interested in knowing where to find the definition of a statutory crime for example in Act... of 19... section... Additional information as to how the definition has been applied in practice and interpreted by the courts would also be useful. (This is the information supplied by Claassen (1997[2]).) Such information would be wasted on the layperson who is only concerned in determining what form of conduct comprises the crime. For example, the definition of theft given earlier is so technical and complicated that although it contains all possible elements a lawyer needs to know, it merely confuses the layperson and cannot be understood unless extensive further explanations are given.

Our only solution was to compromise. We therefore tried to simplify definitions in order to make them more understandable to the layperson but without sacrificing aspects which might also be important to a student of law. In the case of statutory crimes we decided to refrain from mentioning where in a statute a specific definition can be found. The reason for this approach is because statutes are often amended and referential information relating to statutes easily becomes outdated. Here we also decided to restrict the definition to the proscription as given in the relevant statute, but stated in a more simplified form. In the case of the common-law crimes all the elements comprising the specific

crime are generally mentioned in the definition, especially the type of fault required, as this may differ (being either intention, negligence or faultless liability).

2.3 Availability of Source Material

The scarcity of South African legal dictionaries had a further impact on the work of the Centre. Although English is an international language and explanatory English dictionaries are freely available, this provided yet another drawback. Each English legal dictionary on the market reflects the legal system of its country of origin. British English dictionaries give the meanings of terms in England. Canadian English refers to Canadian law, American dictionaries give the meanings of legal terms in the United States, Australian dictionaries the Australian law system, and so forth. Although there is a correlation in the basic principles that apply in most of the legal systems in the Western world, details can differ considerably. The two major legal systems found in the West are the Common Law system applied in the Anglo-American countries and the Civil Law or Romano-Germanic system which was formed in continental Europe and to which South Africa belongs (David and Brierley 1978[2]: 33). The latter system has Roman law as its origin. In the case of South Africa the Roman law has furthermore been adapted and supplemented by Dutch law and English law to provide a unique South African law. Due to this uniqueness, definitions of terms used in other English-speaking countries do not necessarily correspond to those that apply in South Africa.

To return once again to the example given earlier of the well-known term "crime". The technical meaning of this term as it is generally used in South Africa, consisting of its four basic components, has already been given. Apart from the term "crime" one comes across a number of related terms such as "offence", "misdemeanour", "felony", "contravention", and "transgression". The question that now arises, is whether these related terms are precise synonyms of "crime" or whether there are shades of differences, and if so, how the terms should be distinguished. Various possibilities come to mind: the terms may all relate to "crimes" merely indicating various levels or degrees of seriousness; alternatively they may draw a distinction between different types of crimes on the ground of origin or development thus differentiating between criminal conduct which is of statutory origin and conduct prohibited in terms of customary common law. Students of law who are not aware of the basic differences between various legal systems which all use English as the language of communication, might fall into the trap of regarding a definition given in a British dictionary as being the same as the one used in South African law. Because the target group which the Centre had in mind for its *magnum opus* was so diverse, it was often necessary to refer to such finer distinctions. Sometimes we had to resort to extensive explanations, as the following quote from Snyman (1995[3]: 7) which was used in the dictionary, illustrates: "In English law

crimes were until 1967 divided into three categories, namely 'treasons', 'felonies' and 'misdemeanours'. 'Treasons' were more serious crimes than 'felonies', and 'felonies' more serious than 'misdemeanours'. This distinction used to be of importance in English law from a procedural point of view, and from the point of view of punishment, since lighter punishment was prescribed for 'misdemeanours' than for 'felonies', and for 'felonies' than for 'treason'. In 1967 this distinction was abolished in England by legislation but in the USA it still exists."

Other terms were not so easy to handle. The terms "crime" and "offence" for example are used by lawyers in an haphazard way, sometimes indiscriminately, other times intuitively in the correct context. When confronted, lawyers cannot give adequate reasons why one term was preferred to the other. The layman in this instance often thinks that "crime" refers to the more serious forms of criminal conduct such as murder, rape or theft whereas "offence" refers to less serious forms of criminal conduct such as the contraventions of municipal bylaws. Yet Snyman (1995[3]: 7) is of the opinion that there is no technical difference between a crime and an offence. However, it seems as if the practising lawyer tends to use the term "crime" for conduct considered as criminal in terms of the common law, whereas "offence" is used more generally to relate to statutory prohibitions. The reason for this differentiation can perhaps be sought in the fact that the Criminal Procedure Act 51 of 1977 — which lays down the procedures for the prosecution of crimes — uses the word "offence" throughout and defines it as "an act or omission punishable by law" (s 1).

A similar situation arises in respect of words such as "litigation", "action", "case" and "dispute". The compiler of the English/Afrikaans terminology lists has to be on the alert. A term which is not characteristic of the South African legal system, can easily slip through. This is even more so because, as was already mentioned, there are no criminal law dictionaries with definitions based on South African law available in the country. Nonlegal dictionaries seldom provide the finer nuances of meaning necessary to distinguish between synonyms or near synonyms. Ample use has therefore to be made of South African legal textbooks and this delays the work considerably. Where terms are particularly difficult to define, help is obtained from academics involved in the teaching of law. However, simplifying a definition without omitting some of its salient features remains extremely difficult.

Merely omitting those legal terms which are not applied in South Africa, is not always regarded as the best solution. The development of the world into a "global village", the development of communication technology and the availability of English and American films, videos and other forms of communication in the South African market has had the effect that certain legal terms which are strictly speaking not at all South African, have become part and parcel of our everyday speech. It is therefore necessary to include such terms in the

dictionary, and to explain their meanings while indicating why they are not regarded as South African and what the correct South African equivalent is. The term "jury" for example, crops up so often that the average South African is under the impression that a jury system exists in this country although it was abolished in 1969. (By "jury" is meant, according to Coertze and Hiemstra (1947: 81), nine lay persons, drawn by lot, who sit in criminal cases as judges of fact, not of law.)

In English law a barrister is "a specialist consultant and pleader belonging to a class of lawyers that is given predominant rights of audience in superior courts" (Garner 1995[2]: 99.) To rephrase, a barrister is an advocate admitted to the bar who might appear in court on behalf of suitors or defendants. He is distinguished from the attorney who draws the pleadings, prepares the testimony and conducts matters out of court. In the United States the term has no official meaning but is a popular synonym for "lawyer". In South Africa the acceptable term is "advocate".

Another term that is often heard in South African conversations is "first degree murder". It has its origin in American jurisdictions where a differentiation is made between first degree and second degree murder on the basis and gravity of the offence (Garner 1995[2]: 259). In the case of the former the intentional killing is "premeditated" whereas in the latter case the intentional killing occurs without "premeditation" (Handler 1994: 351). For a South African, the concept of "premeditation" is incorporated in the element of intention because the latter refers to the idea of having knowledge of the unlawfulness of one's conduct but nevertheless directing one's will towards attaining a desired result (Snyman 1995[3]: 168).

In other instances identical terms are used in different legal systems but the meanings do not always correspond. The term "battery" would perhaps be a good example to use. In English law this term relates to "the unlawful beating or wounding of a person or mere touching in a hostile or offensive manner" (Hanks 1989[2]: 130). In South Africa "battery" has a more limited meaning and relates to a type of assault that is committed persistently and intermittently, usually by a relative of the victim or by a person living in the same house. In this country, however, there is no crime of battery. The type of conduct mentioned in relation to this term is punished as assault (Jansen 1993: 202).

Due to the various problems mentioned here, the compilers of the source-language terminology list quite often found it easier to work with the Afrikaans equivalent of a term instead of the English original. In this way they were less likely to confuse the meanings applied in different countries. This is why the Afrikaans terminology had to be compiled simultaneously with the English. It could not be added later as a mere translation of the English. Formulating a definition in Afrikaans at least had the advantage that the end product on the English side was a true reflection of the South African view.

2.4 English-Afrikaans Translation

However, the approach mentioned above had a serious disadvantage which caused a further stumbling block. Terms in one language do not always have precise equivalents in another language. The term in the source language is frequently broader or narrower in meaning than the term in the target language into which it is translated. This problem arose quite often as the Centre's dictionary is not limited to terms which occur only in the field of criminal law and criminal procedural law. There are also a number of what one can call "peripheral" terms. Such terms are generally used in a nonlegal sense but they also occur so often in the fields of criminal and criminal procedural law that they can just as well be classified as criminal law terms. These terms quite often have various meanings: some of them strictly related to criminal law, others of a more general nature. In the translation process from English to Afrikaans one finds that for each meaning attached to the English term a separate term might exist in the Afrikaans. To make things even more complicated the same might apply to the Afrikaans side. The Afrikaans translation of a term might therefore have additional meanings which are not incorporated in the English equivalent. In a normal dictionary where terms in one language are merely translated into another language, this phenomenon is not really problematic. However, the moment when a definition is also given for a term in the source language and the definition has to be translated and has to reflect the same meaning in the target language as well, problems are sure to arise. It was therefore inevitable that the definitions in source and target languages could not always be precise mirror images of one another. (The aspect mentioned in this paragraph had further consequences when it came to the writing of an appropriate computer program. It was the Centre's intention to create a database where a target language could be changed into a source language and vice versa and the compilators had to take this into account.)

An example might explain the situation better:

In the legal sense the term "enrol" normally has three distinct meanings depending on whether it is used with regard to a thing, a person or a lawyer. (It is interesting that a lawyer is regarded as neither a thing nor a person!) In the first instance "enrol" has the meaning of "to put on record" or "to record or note in a roll or list". In the second sense it means "to become or cause to become a member, to enlist or register" in other words the physical act of writing a person's name in a list or register (Hanks 1989[2]: 508). Where the term is used with relation to an attorney or advocate, it has the meaning of admitting them to the bar or side-bar. In Afrikaans the corresponding terms are "ter rolle plaas" when used in relation to a thing, "inskryf" or "werf" where it relates to placing a person's name on a register, and "toelaat" in terms of advocates and attorneys. All the Afrikaans terms can be used in other senses which differ from the ones in which they are used here. To mention just a few: the term "werf" can also relate to a yard around a building and the term "toelaat" to

permit someone to do something. In this specific example the solution was quite easy: the additional meanings were merely omitted because they did not relate to criminal law. However, similar cases were not so easy to handle.

During this stage of the work, interesting aspects regarding language and the origin of words and terms also came to light. In English the word "government" is used to indicate the existing ruling party as well as the state itself (Hanks 1989[2]: 659). Afrikaans on the other hand distinguishes between the two concepts. In Afrikaans the distinction is confirmed by the fact that the Government Gazette and a Government Notice are called "Staatskoerant" and "Goewermentskennisgewing" respectively. Why separate terms for a concept which seems the same? No existing dictionary could help and we had to refer to the original Dutch (Beets and Muller 1900: 494). It appears that the difference comes from the fact that the word "staat" is considered a neutral term without emotional value, whereas "goewerment" is politically coloured. (In the first indigenous language into which the terms were translated the differentiation found in the Afrikaans was maintained rather than the similarity existing in the English. From the Sepedi word "buša" which means "to govern", two nouns were derived, namely "pušo" for government and "mmušo" for state.)

3. Legal Problems

What has been said so far relates only to those problems which had direct bearing on terminology, lexicography and language. In the indirect sense there were other, possibly more important issues (from a lawyer's point of view) that also had to be taken into consideration. I call them indirect issues because they are strictly speaking not related to the work as such but are important prerequisites which must be kept in mind because they give rise to various legal consequences. In what follows, two of these side issues are considered namely the obligations flowing from copyright laws and the liabilities incurred by the creation of a new product.

3.1 Copyright Issues

A detailed exposition of the copyright requirements applicable to terminologists and lexicographers was given by Jooste and Alberts (1998: 123) in an article in the previous edition of *Lexikos*. The writers referred to "lexicographers and terminographers as being both creators of copyrightable products, and users of copyrighted products". As these two aspects go to the heart of copyright protection, I will refer briefly to both in so far as they are applicable when compiling the type of dictionary the Centre has in mind.

The law governing copyright in South Africa is regulated by the Copyright Act 98 of 1978 as amended. (This Act is based on an international agreement called the Berne Convention. It is however the legislation and not the

international agreement that is the primary source for determining the legal principles that apply in this country.) Apart from the Act there are a number of court decisions which interpret various portions of the Act and provide precedents which can be relied on when copyright issues arise. The law governing copyright is extremely complex. I shall therefore attempt to explain some of the problems encountered in this regard by the Centre in layman's language and refrain from using the normal legalese used by lawyers.

The basic principle that applies in the case of copyright, is that a person who creates, something has a right of ownership over the article that he/she has created. In other words, the owner obtains a qualified monopoly over his/her creation which enables him/her to prevent the unsolicited copying of the work (Copeling 1978: 3). Although the idea of copyright protection is not to make the owner of the copyright rich, he/she obtains the financial benefit that results from his/her work (Dean 1998: 1-1). The various categories of works protected under the copyright laws include literary works. Strictly speaking it is better to refer to these as written works because the literary merit of the work is irrelevant (Dean 1998: 1-6; also see *University of London Press Ltd v University Tutorial Press Ltd* 1916 2 Ch 601 608). Books, articles, encyclopaedias and dictionaries are all regarded as written (or literary) works (s 1(1) of the Copyright Act 98 of 1978 as amended) and are protected under the Act. This aspect is important to the compiler of a new dictionary as these are the sources normally consulted when compiling the new work.

3.1.1 The use of existing sources during the compilation of a new dictionary

As stated above, copyright gives the copyright owner of a work the sole right to exploit his/her work commercially for a certain period. It is as if the owner obtains a bundle (Dean 1998: 1-81) of exclusive, overlapping rights. Actions by outsiders which diminish these rights, are regarded as infringements. Broadly speaking, one can say that infringement of another's copyright takes place when there is unauthorised copying or unauthorised commercial exploitation of a work (Dean 1998: 1-37). Although it is not stated as such in the Act, infringement can only occur when there has been actual copying of a substantial portion of another's work (Copeling 1978: 24, 25) without the copyright holder's permission. The prohibition seems simple and straightforward enough but it leaves the door open for diverse interpretations.

The first question that arises, is what is meant by actual copying. It is easy to determine that an identical copy is a case of actual copying, for example a photostat copy of a printed book. However, the issue becomes clouded when the format of the original is changed to some degree so that the copy is not a precise replica of the original. Generally speaking, lawsuits involve situations where protected material has either been used commercially or altered. Where a work is transformed in such a manner that the original or substantial features of the original remain recognisable, it is called either a reproduction or an

adaptation depending on how the original was transformed. Both "reproducing the work in any manner or form", and "making an adaptation of the work" are regarded as comprising actual copying and therefore constitute infringement (s 6 of the Copyright Act). For our purposes it is important to note that the translation of a literary work is specifically mentioned in the Copyright Act as being a form of adaptation (s 1(1)).

Secondly, even where actual copying does take place, the copying must have been of a substantial portion of the work and not of isolated passages or phrases. The term "substantial" is interpreted as relating to both quantity and quality, although the latter is regarded as being of greater importance than the former (Dean 1998: 1-37). A substantial portion in relation to a literary work can therefore refer to a small but extremely important part of it (for example a summary or conclusion). "As long as what is taken has substance in the original work (and is not *de minimis*) or has sufficient pith to constitute the embodiment of original intellectual activity in a material form, for instance a paragraph in a book or perhaps even a sentence or sequence of sentences, copyright infringement could arise", according to Dean (1998: 1-38). "The criterion is what has been taken from the plaintiff's work and not what portion the infringing material makes up qualitatively of the contentious work." This was the approach followed by our Appellate Court in *Payen Components SA Ltd v Bovic CC & others* 1995 (4) SA 441 (A) where the reproduction of individual part numbers from a catalogue of spare parts was regarded as a substantial part from the catalogue.

"As a general rule, if there is only one way to state something, it is not copyrightable", Zelezny (1993: 289) however stresses. "For example, the scientific equation $E = mc^2$ could not have been copyrighted by Albert Einstein".

The Copyright Act makes special provision for specific circumstances where one may not be liable for infringement when using another's work without his/her permission. These exemptions are allowed because it is considered to be in the public interest that the exclusivity of the copyright owner's rights are limited in certain circumstances (Dean 1998: 1-51). For purposes of the work done by the Centre for Legal Terminology in African Languages the most important of these so-called "statutory defences" are those relating to research (s 12(1)), quotation (s 12(3)) or "by way of illustration ... for teaching" (s 12(4)). Apart from these defences the Act also makes provision for a general exemption in section 13 in terms of which "reproduction of a work shall also be permitted as prescribed by regulation, but in such a manner that the reproduction is not in conflict with a normal exploitation of the work and is not unreasonably prejudicial to the legitimate interests of the owner of the copyright". This means that the regulations issued in terms of the Act must also be consulted to obtain more precise guidelines. When read with the exemptions mentioned in sections 12 and 13, the regulations clearly indicate that use made of another's work must always be reasonable and the source and author's name should be mentioned (in this regard see also Dean 1998: 1-51 to 1-53).

In the Act reasonableness is equated with fair dealing or fair practice. Although this concept is very vague and subjective and therefore difficult to define, it clearly relates to questions of degree or extent. In the case of quotations, for example, it means that one has to take into consideration such aspects as the number and extent of the quotations (in other words, how much of the text consists of quotation), the use made of the quotations (whether they are used as a basis for comment, criticism or review or to convey mere information), or their proportion to the text in which they are inserted (long extracts with short comments in contrast to short extracts with long comments).

One can argue that the principles set out above are not a stumbling block if, as mentioned earlier, the Centre uses mostly foreign dictionaries for the compilation of its work. However, the copyright of works created in other countries is also protected in South Africa in terms of various international treaties which were incorporated into South African law (by section 37 of the Copyright Act after notice in the *Gazette*). The oldest and most elaborate treaty in the field of copyright is the one known as the Berne Convention. It had its origin in 1886 in Switzerland and has since been refined and brought up to date by subsequent conventions, the last of which was held in Paris in 1971. The basis of the Berne Convention is that each country that has signed it, undertakes to enforce the copyright of works created or published in any of the other signatory countries as if those works originated in the home country of the signatory (Dean 1998: 88). At present more than 80 countries, including South Africa, have ratified the Berne Convention. In practice this means that works originating within any signatory country are protected in South Africa as if those works were South African.

The above is merely an overview of the most basic principles relating to infringement of copyright. When applied to the compilation of the Centre's dictionary, this overview implies:

(1) Selecting single terms from a source work and using these in a target work does not normally amount to an infringement of copyright. This conclusion can be drawn from the fact that in the case of works comprising common information which is in the public domain, it is not the information that is the subject of protection but the formulation and form of the work (Dean 1998: 1-42). Trittipo (1996: 369 as quoted in Jooste and Alberts 1998: 129) takes the argument further by stating that if the "idea" (in other words the information) and its "expression" (that is the formulation of the idea in words or phrases) are inseparable, copying the expression will not be barred, since protecting the "expression" in such circumstances would confer a monopoly of the "idea" upon the copyright owner. Individual words or terms in general language are the common property of all speakers, since the idea cannot be separated from the way it is expressed in a single word (Jooste and Alberts 1998: 129). In such instances, copyright subsists in the selection of terms rather

than in the terms *per se*. The moment a new selection of terms is made, the original work is normally altered to such an extent that the new work cannot be regarded as a copy of the original. As stated in *Waylite Diaries CC v First National Bank Ltd* 1993 (2) SA 128 133B, "there is a distinction between copying (which negatives originality), and the use by an author of already existing material or of knowledge common to himself and others (which does not)". Where a legal dictionary contains all legal terms in a specific language, the selection of only those terms relating to criminal law or criminal procedural law cannot be regarded as actual copying of the original. However, to be certain that this is not the case, one can add further terms not mentioned in the original work.

(2) If definitions are added to the selected terms, it takes the target work even further from the original source work which was used as basis, but at the same time this conduct leads to new problems. The question then arises of whether a definition that is copied from an existing copyright protected work (South African or otherwise), could, in the light of what has been said above, make the copier liable for infringement of copyright.

Definitions that are structured in such a way that they are comprehensive and precise, are identical to Zelezny's example of the mathematical formula quoted earlier. In the legal field the definitions of most well-known common-law crimes probably fall within this group. For example, defining murder as "the unlawful and intentional causing of the death of another human being" (Snyman 1995[3]: 401) is virtually unalterable. One can safely assume that the copying of such a definition does not violate the rights existing in the source.

Unfortunately all definitions are not so easy. Where a definition in a source work is set out clearly and cannot easily be improved on, although it is not the only way in which the wording can be formulated, it can only be copied with impunity if one or more of the defences can be relied upon. The most probable defence would be the one relating to quotations. In such a case however, the proviso mentioned in section 12(3) must be fulfilled, namely "that the quotation shall be compatible with fair practice, that the extent thereof shall not exceed the extent justified by the purpose and that the source shall be mentioned, as well as the name of the author if it appears on the work". Fair practice is not necessarily applicable only to a work as a whole. Where a sentence or phrase is so unique that it is directly linked to the creator thereof, repetition thereof without mentioning the source and indicating that it is a quotation, is regarded as infringement. As it is neither customary nor financially justifiable to quote each source immediately after a specific definition has been given, one should in these cases try to rephrase such definitions as far as possible.

(3) In the case of statutory crimes, defining the crime does not lead to the copyright issues explained above. In terms of section 12(8)(a) of the Copyright Act, government-created works can be freely quoted because "no copyright shall subsist in official texts of a legislative, administrative or legal nature, or in official translations of such texts".

3.1.2 Obtaining copyright in the new creation

The second copyright issue with which the Centre had to deal was whether the new dictionary would enjoy copyright even though it consisted of extracts from various other sources and might infringe the copyright of those works. In this regard section 2(3) of the Act expressly states that "a work shall not be ineligible for copyright by reason only that the making of the work ... involved an infringement of copyright in some other work". As already said a dictionary falls under one of the categories mentioned as protected works in the Act and therefore has the inherent possibility of being protectable. The actual protection depends on whether the other basic requirements have been met. Where this has occurred, there are no further formalities to obtain copyright protection as we do not have a system of registration or recording of copyright in this country (Dean 1998: 1-15).

Briefly stated, the various basic requirements are the following:

(1) Material form

The Act specifically states that the work must exist in writing or some other material form (s 2(2)). A work cannot enjoy copyright protection before it is fixed in a tangible medium. The creator's particular way of expressing himself/herself is protected, and not his/her raw ideas. The material form in which a work must appear before it enjoys protection, will obviously vary depending on the category of work concerned. It is however not necessary that the material form should express a meaning in language. In the case of a work such as a new dictionary, the "material form" would probably be writing, a tape recording, a computer disk or microchip. It makes no difference where these "material forms" are in themselves meaningless, and can only be read when used in conjunction with a specific machine such as a computer.

(2) Originality

A work must be original before it can enjoy protection (s 2(1) of the Act). Simply stated, originality means that the author must have created the work — it should not merely be a reproduction of existing material. The work does not need to be unique or inventive, but must be the product of the author's own

efforts and must not be copied from some other source (Dean 1998: 1-15; also see *Kalamazoo Division (Pty) Ltd v Gay* 1978 (2) SA 184 (C)). Originality must therefore be viewed as the execution of original skill or labour, and not as original thought or expression of thought (*Klep Valves (Pty) Ltd v Saunders Valve Co Ltd* 1987 (2) SA 1 (A) as confirmed in *Appleton & another v Harnischfeger Corporation & another* 1995 (2) SA 247 (A)).

Works may however contain some components which are not original. In such a case the original creative effort is used on material that already exists. "The individual bits of information contained in such works are not original creations of the compilation author, and taken individually they may not even be copyrightable", according to Zelezny (1993: 291). "Yet the compilation as a whole is an original, copyrightable work if the information is selected, arranged, and presented through independent effort and with 'a modicum of creativity', to use the judicial phrase." He then mentions an American court decision of 1991 where a directory containing the names of public relations firms, their addresses and a list of their employees, was declared a copyrightable compilation. In this case the creative effort lay in the soliciting of the listings and determining which firms qualified for inclusion.

In the case of a collection or compilation, individual pieces of information from works that are already in existence, are collected and put together. They are first selected, arranged and then through independent effort and with a degree of creativity presented in a way that gives rise to a new work with its own copyright. The individual contributions may be protected by their own separate copyrights. The copyright of the author of the collection is limited to the collection he has put together (the new compilation). He does not suddenly obtain copyright in someone else's work — in the contributions he has collected.

This aspect of originality was summarised by Lord Atkinson in the English case of *MacMillan & Co v Cooper* 1923 LR 51 Ind App 109 (as quoted by Copeling 1978: 15): "To secure copyright for the product it is necessary that labour, skill and capital should be expended sufficiently to impart to the product some quality or character which the raw material did not possess, and which differentiates the product from the raw material." Similar views were expressed in South African court cases (see for example *Waylite Diaries CC v First National Bank Ltd* 1993 (2) SA 128).

(3) Propriety

For the sake of completeness this requirement is mentioned here, although it does not play a role in the compilation of a dictionary. It is not really a requirement that has to be met but our courts have consistently held that copyright protection will not be given to a work which is improper, defamatory, immoral, blasphemous or obscene. Propriety is therefore not so much a condition for subsistence of copyright but rather a condition for the enforcement of

copyright (Dean 1998: 1-18; also see *Goeie Hoop Uitgewers (Edms) (Bpk) v Central News Agency & another* 1953 (2) SA 843 (W)).

(4) Publication or qualified person

The final requirement that has to be met is that the first publication of the new work should take place within South Africa (s 4 of the Copyright Act) or alternatively, where there is no publication, the author (or in the case of joint authorship, one of the authors) should be a qualified person at the time the work is made (s 3). When one is dealing with an individual, a qualified person means a person who is a South African citizen or is domiciled or resident in the Republic. In the case of a juristic person, a qualified person is a body (institution) incorporated under the laws of the Republic (s 3(1)).

The practical implication of all these requirements is that works are protected before publication while they are still in the process of being created. Those bits and pieces of the Centre's creation that have already been completed (and which fulfil the other requirements of a material form and originality), therefore enjoy copyright protection even though the work as such is not yet ready for publication.

3.1.3 Who owns the copyright in the Centre's dictionary?

Where several people are involved in a creation process, it can sometimes be quite problematic to determine who actually created the work. In the case of joint works prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole, the authors are co-owners of the copyright and share in its profits (Dean 1998: 1-24). Although guidelines exist in this regard and the Act makes special provision for situations where work is done in the course of employment or on consignment, the issue is not always clear. As the provisions of the Act in this regard (s 21) can be altered by written agreement it is therefore recommended that in the case of organisations such as the Centre, this be done in advance in order to avoid disputes and uncertainty over copyright ownership later on.

Although copyright in a new work cannot be registered or approved by a government agency, a copyright notice should be placed on works which are distributed to the public. Such a notice indicates that copyright exists in the work so that a would-be infringer is deterred from copying the work as he/she cannot state as a defence that he/she was not aware of the subsistence of copyright in the work (a statutory defence provided in s 24(2) of the Act against a claim for damages). Where a copyright notice is used, it is recommended that it should appear in a conspicuous position and should contain the following:

— the word "copyright" or the international symbol ©,
— the year of first publication, and
— the name of the copyright owner.

This form of marking is the one prescribed by the Universal Copyright Convention. Although South Africa is not a member of the convention, this has become the acceptable form of marking in most countries (Dean 1998 : 5-21 fn 88).

3.1.4 Copyright on the Internet

The whole issue of copyright is likely to grow even more complicated as electronic manipulation extends. At this stage the Centre has not yet considered making completed definitions available on Internet, so this aspect will not be discussed here. I would however like to refer to a remark by the Internet expert Negroponte (1995: 58): "Copyright law is totally out of date. It is a Gutenberg artefact. Since it is a reactive process, it will probably have to break down completely before it is corrected." This might be an overstatement of the case but it can lead to controversy. On the one hand, some people are of the opinion that the law should not limit the free flow of information on the Internet. On the other hand, most authors and publishers are notably reluctant to make full works available on the Internet as this can affect their prospective income. The future here is still nebulous.

3.2 Product Liability

From a lawyer's perspective there is one further aspect which should be kept in mind, namely the basic principle that anyone who, through his conduct, causes harm to another in a situation where the conduct is wrongful and blameworthy, should compensate the injured person for the damage suffered. (As stated in Neethling et al. 1994: 4 these are the general requirements for any delictual claim.) The basic explanations that were given above with regard to criminal conduct and blameworthiness, apply here as well. Wrongfulness in this case is similar to the unlawfulness that was given as an element of a crime, thus relating to conduct that would be regarded as unacceptable by the community because no valid reason exists which could be regarded as excuse for the conduct (Neethling et al. 1994: 31 read with 37 and 67). The development of industries and technology has led to an extension of this basic principle and given rise to what is nowadays called "product liability".

In principle "product liability" means that a manufacturer of a product is liable for harm or damage that might flow from the use of his product if the conduct of the manufacturer during the process of manufacturing can be regarded as wrongful and blameworthy (Neethling et al. 1994: 305). In the case

of Anglo-American law this liability has developed even further and the requirement of blameworthiness has been diluted by a specific application of the doctrine that facts should speak for themselves. The mere fact that a manufacturer has placed a faulty product on the market then gives rise to certain presumptions, namely that he used an unsuitable production process or that his employees exercised his production process negligently. In this way the basic principle that fault (blameworthiness) should be a requirement for liability is undermined and a disguised no-fault liability arises (Neethling et al. 1994: 307 fn 279). Although such a general "product liability without fault" is not frequently encountered in South Africa, it is propagated by various eminent jurists (see in this regard Neethling et al. 1994 : 308 and the references given there). To date, a consumer who wishes to institute a claim against a manufacturer must prove that the conduct of the manufacturer was blameworthy and wrongful and has as a result caused damage to the consumer.

So far our courts have not yet decided a case of a claim instituted by the user of a dictionary for damage flowing from such use. Taking into regard, however, the unique nature of the dictionary the Centre has in mind, and the prospective target group, it is possible that such a dictionary might give rise to delictual claims based on "product liability". I would therefore like to conclude by referring to a few hypothetical scenarios.

Assume for a moment the dictionary envisaged by the Centre is completed and published. The effect would be that there is an authoritative work available in the domain of criminal law and criminal procedural law giving all the terms encountered in these fields and explaining what each means. As the compilers of the dictionary have acted in their professional capacities, they have tacitly undertaken to provide correct information and in theory are liable for any harm that might arise from use of this product. Alheit (1997: 56) distinguishes three types of liability that might arise from product usage, namely where there is a defect in the product itself, where the product is not defective but is used incorrectly and lastly where the product is available on the market but is not used at all.

In our speculative discussion, the first two possibilities might be present. A definition in the Centre's dictionary might perhaps be incorrect — the product that has been created, is then defective. Assume for a moment that X is a lawyer. He uses this defective definition in order to prepare for a case and due to the incorrect information loses his case. The defect in the product has given rise to the damage, therefore the compilers of the dictionary would be responsible for X's losses. Improbable? But in theory not impossible.

Have a look at the second scenario: in this case X is a female and lives alone in a house. One evening when entering her home, she is attacked by a robber whom she shoots in self-defence. X is accused of murder. She decides to conduct her own defence. She consults the Centre's dictionary in order to determine precisely what is meant by the crime of murder so that she can prepare accordingly. The definition of murder reads: "the unlawful and intentional

causing of another person's death". X regards her conduct as unlawful because it is contrary to the legal norms applicable in this country. She also regards her conduct as being intentional because when she fired the shot she intended to kill the robber. She therefore pleads guilty to the charge and presents no evidence on her own behalf. She is found guilty and sentenced. Incorrect use of the correct information in the dictionary has in this case been the cause of her downfall. (In practice this cannot happen in the case of a murder charge because even where an accused pleads guilty, the state still has to prove the basic elements of the crime. The example was merely chosen because of the brevity of this specific definition.)

4. Conclusion

The examples given above might be preposterous and over-simplified, but with the ever increasing use made of "do-it-yourself law", similar scenes might easily arise. This is not the appropriate time or place to discuss the relevant legal principles in more detail as these comprise a whole new field of study. Hopefully the dictionary we are compiling at present, will weather all storms.

References

Alberts, M. 1997. Legal Terminology in African Languages. *Lexikos* 7: 179-191.

Alheit, Karin. 1997. *Issues of Civil Liability from the Use of Expert Systems.* Unpublished LL.D. thesis. Pretoria: University of South Africa.

Beets, A. and J. W. Muller (Eds.). 1900. *Woordenboek der Nederlandsche Taal Vijfde deel.* 's Gravenhage: Martinus Nijhoff.

Claassen, R.D. 1997[2]. *Dictionary of Legal Words and Phrases.* Durban: Butterworths.

Coertze, L.I. and V.G. Hiemstra. 1947. *English-Afrikaans Legal Dictionary.* Cape Town: Juta.

Constitution of the Republic of South Africa 108 of 1996 (as amended). Pretoria: Government Printers.

Copeling, A.J.C. 1978. *Copyright and the Act of 1978.* Durban: Butterworths.

The Copyright Act 98 of 1978 (as amended). Pretoria: Government Printers.

The Criminal Procedure Act 51 of 1977 (as amended). Pretoria: Government Printers.

David, René and John E.C. Brierly. 1978[2]. *Major Legal Systems in the World Today.* London: Stevens & Sons.

Dean, O.H. 1998. *Handbook of South African Copyright Law* (Loose leaf). Cape Town: Juta.

Garner, Bryan A. 1995[2]. *A Dictionary of Modern Legal Usage.* New York: Oxford University Press.

Handler, Jack G. 1994. *Ballentine's Law Dictionary: Legal Assistant Edition.* New York: Delmar.

Hanks, Patrick (Ed.). 1989[2]. *Collins Dictionary of the English Usage.* London: Collins.

Hiemstra, V.G. and H.L. Gonin. 1992[3]. *Drietalige Regswoordeboek/Trilingual Legal Dictionary.* Cape Town: Juta.

Hosten, W.J., A.B. Edwards, Carmen Nathan and Francis Bosman. 1977. *Introduction to South African Law and Legal Theory.* Durban: Butterworths.

Jansen M. 1993. Enkele regsprobleme rondom gesinsgeweld. *Social Work/Maatskaplike Werk* 29(3): 201-212.

Jooste, Michiel and Mariëtta Alberts. 1998. Lexicography, Terminography and Copyright. *Lexikos* 8: 122-139.

Marais, C.A. 1980. *Marais se Juridiese Woordeboek/Marais' Juridical Dictionary.* Verwoerdburg: Hennop-uitgewers.

Milne, Alexander, Clifford Cooper and Brian D. Burne. 1951[3]. *Bell's South African Legal Dictionary.* Durban: Butterworths.

Neethling, J., J.M. Potgieter and P.J. Visser. 1994. *Law of Delict.* Durban: Butterworths.

Negroponte, Nicholas. 1995. *Being Digital.* London: Hodder & Stoughton.

Smuts, J. en I.J. Smuts. 1992. *Woordeboek van Regs- en Handelsterme.* Kaapstad: Nasou.

Snyman, C. R. 1995[3]. *Criminal Law.* Durban: Butterworths.

Trittipo, M. 1996. A Primer on Translations and Copyright. *Global Vision. Proceedings of the 37th Annual Conference of the American Translators Association, Colorado Springs, October 3, 1996*: 367-371.

Walker, David M. 1980. *The Oxford Companion to Law.* Oxford: Clarendon Press.

Zelezny, John D. 1993. *Communications Law: Liberties, Restraints and the Modern Media.* Belmont: Wadsworth.