



An agency of the
Department of Arts and Culture

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NPO 000-606
PBO Ref. 130003512

Submission by Blind SA on the Copyright Amendment Bill [B13B-2017].

1 The submission is made by Blind SA, a National Disable People’s Organisation established in 1946 to empower blind and partially sighted persons. Blind SA has thirty member organisations throughout the country with over one thousand two hundred blind and partially sighted members. Blind SA advocates for the human rights and access to education, employment, social, cultural, sporting and civic participation and well-being of blind and partially sighted persons.

2 Written Submission.

2.1 Unconstitutionality of Copyright Act 1978.

The current Copyright Act 1978 violates the Bill of Rights.

It does not permit the creation of accessible formats of works thereby unfairly discriminates against persons with visual and print disabilities in violation of the right to equality, Section 9; freedom of expression, Section 16; access to equal right to basic and further education materials including digital and language choices, Section 29.

It also does not protect the rights of authors, performers, and other creators to fair remuneration and fair contract terms, as needed to promote the right to dignity and the principle of decent work, Section 10.

The existing copyright limited access of books from Education Institutions and Public Libraries during the Covid pandemic. The exceptions and limitations in the Cap makes provision for use by remote means

The Copyright Amendment Bill promotes the Bill of Rights by amending the unconstitutional Copyright Act with progressive legitimate provisions. The Copyright Amendment Bill is urgently required to be enacted.

2.2 Section 12.

In our opinion the fair use clause in Section 12A, is fully in compliance with the Constitution of our country.

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the inclusion of the words “such as” before the list of permitted purposes makes it clear that the list is open to other purposes of use. The reason to include an opening term like “such as” to a list of permitted purposes is to ensure that fair uses of the future are permitted without further legislative amendment.

Fair use of works for information purposes would be adequately dealt with under the general flexible exception in Section 12A. These provisions exist in several other countries.

The right to translate works may be necessary to promote various Constitutional rights, such as the right of South Africans “to receive education in the official language or languages of their choice in public educational institutions.

We recommend the amendment in this Section of translation right to include “any translation for a non-commercial purpose” in keeping with the Constitution of SA in sections 29, 30 and 31.

Section 12D permits reproduction of “a whole textbook” solely for “educational or academic activity.” This allows the educational institutions to copy an entire book into a course pack if a licence to do so is not available from the copyright owner on reasonable terms.

Blind SA supports this legitimate policy choice made by South Africa that reconciles its international obligations in respect of copyright and human rights and gives effect to the Bill of Rights in line with its constitutional obligations to South Africans.

2.4 Section 19C Library uses.

This right is necessary to promote the rights of all South Africans to information and to education during periods when physical facilities are closed or inaccessible like the current pandemic.

2.5 International Law and Treaty obligations.

Blind SA urges that the Marrakesh Treaty is ratified as a self-executing Treaty enabling the Treaty provisions to be recognised as Domestic law in the country.

2.6 General.

Section 19D provides the model enabler for the ratification of the Marrakesh Treaty.

Blind SA supports all provisions of the Copyright Amendment Bill except those paragraphs highlighted in this submission. Other provisions apply to blind and partially sighted creators, performers, authors, and rights holders as well as individuals.

3 Oral Submission.



Blind SA confirms our intention to substantiate our written submission at the Public Hearings scheduled for 4-5 August 2021 and at other National and Provincial Public Hearing/Participation events.

4 Blind SA Contact Details.

Jace Nair, CEO, Blind SA



Jace Nair

CEO

Blind SA

29 June 2021