

To: Mr. D Nkosi, Chairperson: Portfolio Committee on Trade and Industry

For attention:

Mr A. Hermans,
Ms M. Sheldon,
Ms. Y. Manakaza,
Mr. T. Madima

Dear Honourable Member Duma Moses Nkosi,

Re: SADTU J.B. Marks region Submission on Copyright Amendment Bill [B-13B of 2017]

Thank you for giving us the opportunity to make written submissions on Sections 12A, 12B, 12C and 12D, 19B and 19C of the 2017 Bill and to comment on whether the Bill is aligned to international IP agreements. Please find our comments and suggestions below.

The South African Democratic Teachers Union (SADTU) is the largest trade union for teachers in South Africa, with a membership of 254 000 teachers. It is allied to the African National Congress (ANC) and is an affiliate of the Congress of South African Trade Unions (COSATU). SADTU is also affiliated to Education International, a Global Union Federation that represents organisations of teachers and other education employees. Educational International (EI) is the world's largest, most representative global, sectoral organisation of unions with more than 32.5 million trade union members in 384 organisations in 178 countries and territories.

Although SADTU was only established in October 1990, it is cognizant of the fact that the current Copyright Act No. 98 of 1978 (as amended) has been a serious barrier to

access to information and education in South Africa for decades. The law is an apartheid-era piece of legislation, which is surprisingly still on the statute books, despite our democracy having celebrated its 27th anniversary in April this year. This goes against the spirit of “correcting the wrongs of the past”, our liberation struggle, and the ongoing struggles in the educational sector for quality education, equality and dignity.

SADTU **J.B. Marks region** seeks to be a force that contributes towards the creation of an education system that can eliminate the main features of the apartheid education system, and improve the lives of South Africans, but this is extremely difficult to do when outdated and restrictive copyright laws create barriers for teachers and learners every day.

The current Copyright Act is embedded in the print and pre-WWW era and has no provisions for people with disabilities, which is in contravention of our Bill of Rights and international conventions on human rights and disabilities. Due to its age, it does not address the digital needs of the 21st century and the Third Revolution, never mind the Fourth Revolution. It fails to address the daily needs of our teachers and learners and librarians, as well as poor and rural communities who have far more burdens than suburban or city schools. It also fails to provide accessible teaching and learning material to teachers or learners who are blind or visually impaired, thus putting them at a serious disadvantage to those who are sighted. This perpetuates discrimination and lack of dignity in our educational system, contrary to the spirit of our Bill of Rights and our mission as a teachers’ union.

The Act has limited provisions for education under ‘fair dealing’ in Section 12(1) but has no other exceptions for education, research, or for libraries. There are, however, a few exceptions for education and archives in the Regulations (Section 13), for education, libraries and archives, but they are relevant to the print era, not the digital world.

Interestingly, the Regulations (Section 13) were adapted from the US Classroom Guidelines of 1976, so we are not sure why opponents of the Bill call the US fair use clause ‘an alien import’. They seem happy to keep the status quo, yet object to progressive provisions that would improve access to information and education and allow libraries and archives to digitise and preserve our historical records.

As you know well, the cruel apartheid system of Bantu Education deprived our people of access to information and an acceptable standard of education, or any education at all. In addition, the apartheid copyright law exacerbated the situation then, and continues to restrict access to information today. The stark reality of these atrocities should be a glaring reminder to Parliament and the President that access to information and education is enshrined in our Constitution, and that discriminatory legislation such as the Copyright Act urgently needs to be repealed immediately. They also need to give serious attention to the protection of our people's human rights and less attention to the avaricious intentions of multinationals who would prefer the status quo in South Africa.

The Copyright Amendment Bill is the key to turning our backs on the past, ridding the statutes of apartheid copyright legislation, and fast-tracking access to information and teaching and learning materials. The Bill was in fact informed by and adapted from many international and domestic policies, documents, WIPO studies, treaties, and proposed WIPO treaties, an international model copyright law and research reports. It also includes many limitations and exceptions that have been enacted and enjoyed by many developed countries for decades. This confirms that the Bill does NOT conflict with international treaties, such as the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and the WIPO Marrakesh Treaty (2013). It is time that our teachers and learners, people with disabilities, libraries, archives, galleries, and museums, were afforded the same privileges as people in other progressive countries.

SADTU **J.B. Marks region** has followed the process of this Bill since it was first published in 2015, and formally supported it in 2018. We are extremely disappointed at the ongoing delays in the legislative process, especially since the inception of this Bill was in 2009, and the first version of the Bill was published 6 years ago. It then sat waiting for the President's signature for 15 months, before he sent it back to Parliament for review. Our ANC comrades and some other parties strongly supported the Bill in 2019, but surprisingly did a turn-about on the same Bill recently in the Portfolio Committee on Trade and Industry, when they failed to vote for the Bill to advance, and agreed for it to once again be stalled for further consultations, etc. SADTU is seriously disappointed about this turn of events. It certainly seems that the right to access to information and education are not a priority for Members of Parliament, and that the

US and EU can now influence the path of our domestic legislation. This is unacceptable and the situation needs to be rectified by passing the Bill without further delay.

The ongoing and unnecessary delays have negatively affected our members, in fact all teachers and learners in South Africa. They have had to battle through the COVID-19 lockdown and ongoing restrictive protocols to get access to information and provide suitable learning materials in the digital space, without an enabling copyright law. Our learners have been deprived of much material because there was no access to printed materials when libraries were closed for several months. Some libraries are still not fully functional. The problem of access to information continues. Libraries do not have exceptions in the current copyright law to digitise and make materials online, without having to get copyright permission, so often teachers have had to find alternative materials, sometimes of a lesser quality than the ones they require. Also, reading of books and other material to learners during literacy classes and reading circles has been negatively affected. What was normal practice for librarians and teachers in the print environment suddenly became a problem in the digital space. Copyright permission had to be obtained for teachers or learners if they needed to read out aloud on digital platforms, such as YouTube or Facebook. Schools and libraries had no budgets for such permissions, so mostly had to find alternative or older material for these educational activities.

South African schools are statutorily mandated to provide quality education with appropriate and quality teaching materials and support to enable every child to become educated. Without quality education and access to a wider variety of study materials and other reading materials, they will not be able to become active citizens in our economy in the future. Many schools have libraries or media centres on their premises, but others, particularly in the poor and rural areas, have to depend on public library services. Libraries play a pivotal role in providing teaching and learning material, access to multimedia, as well as cultural heritage objects and our historical documentary record. Without adequate, appropriate, and enabling copyright laws, they are hampered daily in carrying out their statutory mandates to serve and uplift communities through their many and varied educational and literacy programmes.

SADTU **J.B. Marks region** has carefully perused the Opinion by Adv. Susannah Cowen SC and associates, submitted to the President on 13 October 2019 (see https://libguides.wits.ac.za/ld.php?content_id=50611390; the Joint Academic Opinion dated 10 May 2021 (see <http://infojustice.org/wp-content/uploads/2021/05/South-Africa-CAB-Academic-Opinion-05102021.pdf>), as well as the submission made by Adv. Stephen Budlender SC on 22 February 2019 (see https://libguides.wits.ac.za/ld.php?content_id=56780275).

SADTU **J.B. Marks region** has also perused many of the submissions made by stakeholders for and against the Bill since 2017. SADTU have work-shopped and discussed the Bill and its impact on education and libraries with various organisations, including Education International, which has a keen interest in the success of this Bill, not only for the educational sector in South Africa but also for the continent.

SADTU **J.B. Marks region** has also listened to many media reports and webinars for and against the Bill. We also noted much misinformation about the Bill in the media, purposely circulated by opponents of the Bill to persuade the public to reject the Bill, despite its benefits for all stakeholders.

SADTU **J.B. Marks region** knows first-hand the access problems experienced by teachers, learners during the COVID-19 lockdown and the ongoing restrictions that still negatively affect teaching and learning and library services.

SADTU **J.B. Marks region** concludes that the sections under review in the Bill are progressive, positive, constructive and very urgent. They will address the profoundly serious problems of lack of access to teaching and learning materials, and enable the creation of online, blended and open access teaching materials and programmes. They will also enable teachers and librarians to upgrade their qualifications by doing postgraduate research, using fair use and the exceptions to produce new knowledge, discover, innovate, and share their knowledge through publications. In the process, our educational programme will be vastly improved. The abovementioned sections will also enable libraries and other information services to make works readily accessible through digitisation, e-learning platforms, format-shifting and conversion from old to new technologies, so that knowledge is not lost and can benefit all.

SADTU **J.B. Marks region** believes that the Bill in its current version should be passed by Parliament and returned to President Ramaphosa as a matter of urgency. The DTI has also confirmed that many of the concerns raised by opponents of the Bill can be addressed in Regulations, once the Bill has been assented to by the President.

We look to Parliament to act decisively and to pass this Bill without further delay, so that all teachers and learners, as well as libraries and other information services, can start benefitting from these long overdue provisions, especially in the pandemic. SADTU would like to be considered for the public hearings on 4 and 5 August 2021. We await to hear from you in this regard.

Thank you.

Yours faithfully,

.....*Duly Signed*.....

**J.B. MARKS REGION
REGIONAL SECRETARY
D.D. MANONYE**