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**SOUTH AFRICAN  
LIBRARY FOR THE BLIND**

An Agency of The  
Department of Arts & Culture

8 July 2021

**Mr D Nkosi**

Chairperson: PC on Trade and Industry

**Attention: Mr A Hermans**

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## **THE PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY'S CALL FOR PUBLIC SUBMISSIONS AND COMMENTS TO "HAVE YOUR SAY" ON SPECIFIC CLAUSES OF THE COPYRIGHT AMENDMENT BILL [B13B-2017]**

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**SUBMISSION BY: SANCB COPYRIGHT ALLIANCE, COMPRISED INTER ALIA, OF THE FOLLOWING THREE REPRESENTATIVE ENTITIES & COMMENTATORS:**

1. **SOUTH AFRICAN NATIONAL COUNCIL FOR THE BLIND** – Mr Lewis Nzimande (NED)
2. **TAPE AIDS FOR THE BLIND** – Ms Elza-lyne Kruger (NED)
3. **SOUTH AFRICAN LIBRARY FOR THE BLIND** – Mr Mandla Ntombela (CEO)

Refer to Profiles for Entities & Commentators at the end of this document.

### **1. INTRODUCTION:**

The SANCB Copyright Alliance thanks the Portfolio Committee for the opportunity to "*Have Our Say*" in commenting on specific clauses contained in the Copyright Amendment Bill whilst also renewing our appreciation for the commendable scope and vision granted in **Clause 20 (Section 19D) General Exceptions regarding protection of copyright work for persons with disability**, permitting non-profit organisations to make accessible format versions of copyright works for persons with disabilities without authorisation required by the copyright owner.

Whilst being cognisant of the fact that commentary is limited to the specified clauses under review, our comments reference accommodations granted in Clause 20 (Section 19D) that may influence and bear relevance to, those specific Clauses and Sections selected for commentary by the Portfolio Committee.

## **2. RATIFICATION OF MARRAKESH TREATY**

In addition to our commentary herein, our **SANCB Copyright Alliance** (SANCB; TAB & SALB) respectfully requests an urgent audience with the Portfolio Committee on Trade and Industry to present its two-fold solutions towards concluding the ratification of the **Marrakesh Treaty** (to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities), without compromising the process of adoption and enactment of the **Amended Copyright Bill (B13B-2017)**.

South Africa was one of the signatories of the Marrakesh Treaty formulated at the WIPO Conference held in Marrakesh in 2013, awaiting ratification by 20 member countries for its enactment. The Marrakesh Treaty was duly entered into force on 30 September 2016 and as of 25 January 2021, 79 Contracting Parties (105 countries) around the world had ratified or acceded to the Marrakesh Treaty. As a signatory, the Marrakesh Treaty was duly presented to parliament for processing and deliberation by the National Assembly and the NCOP who both recommended its ratification.

### **2.1 RATIFICATION OF TREATIES PRIOR TO THE PRINCIPLE OF DOMESTICATION INTO LAW**

In some Member States, international instruments such as the **United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)** and the **Marrakesh Treaty**, were ratified and enforced without necessarily having to include corresponding provisions in the national laws of those countries, prior to ratification. The UNCRPD was ratified by South Africa in 2007 (and entered into force on 3 May 2008) prior to our national law accommodating the principles enshrined in this first, human rights, international Treaty.

The South African Revenue Services (SARS) has already set a precedent for the inclusion of the relevant articles of the UNCRPD International Treaty in its regulations and laws for persons with disabilities, without amendments to the SARS Act 34 of 1997, which did not accommodate persons with disabilities. The UNCRPD as an international Treaty, was ratified, its principles were implemented whilst the process of domestication was, and still is, unfolding in South Africa today.

The SANCB Copyright Alliance desires that a similar human rights approach be adopted for the ratification of the Marrakesh Treaty. Accordingly, the Alliance wishes audience with the Portfolio Committee to present its case for the Department of Trade and Industry (DTI), in collaboration with the Department of Arts & Culture (DAC), whose line function administers library services, to uncouple the Marrakesh Treaty from the enactment of the Amended Copyright Bill. Furthermore, to motivate the Department of International Relations and Cooperation (DIRCO) or the President, to sign the ratification for the Marrakesh Treaty, and in so doing, end the book famine for hundreds of thousands of blind, visually impaired and print disabled South Africans.

The DTI and DAC collaborated in 2012 prior to the WIPO Convention in 2013. Post-Marrakesh, it was logical for them to couple the ratification of the Marrakesh Treaty with amendments to the Copyright Act which had itself been updated in May 2011. Whilst the inclusive and far reaching provisions now incorporated in the Amended Copyright Act are welcomed and applauded, they significantly transcend the simple accommodations required by the Marrakesh Treaty for printed works to be made available in accessible formats for persons with disabilities.

## **2.2 RATIFICATION OF MARRAKESH TREATY FACILITATED BY APPENDING PROVISIONS FOR PERSONS WITH DISABILITIES TO THE EXISTING SOUTH AFRICAN LIBRARY FOR THE BLIND ACT (ACT 91 OF 1998)**

As enshrined in Act 91 of 1998, the object of the **South African Library for the Blind (SALB)** is to provide and produce library and information services to blind and visually impaired persons in a medium accessible to the reader (braille; audio and tactile). The SALB is an Agency of the Department of Arts and Culture (DAC) and is currently investigating the potential of updating and amending aspects of its existing Act of 1998.

The SALB is a member organisation of the **South African National Council for the Blind (SANCB)**; so too is **Tape Aids for the Blind (TAB)**, whose object is a national audio library and digital book production service for Blind, vision impaired and print disabled persons.

These three Alliance partners have deliberated the potential of appending and aligning key aspects of the Copyright requirements as contained in Clause 20 (Section 19D) of the Amended Copyright Bill (B13B-2017) "**General exceptions regarding production of copyright work for persons with disability**", to the SALB Act 91 of 1998. In this way, the SALB Act may be used as the instrument for ratification of the Marrakesh Treaty whilst its domestication, alongside the Amended Copyright Bill, is unfolding. The SANCB Copyright Alliance desires to retain intact, the

integrity of the DTI's Amended Copyright Bill Clause 20 (Section 19D), as inserted in the principal Copyright Act 98 of 1978 after Section 19B and the Bills' Section 19C "**General exceptions regarding protection of copyright work for libraries, archives, museums and galleries**".

It has come to the attention of the Alliance, that a non-profit organisation within the blindness sector that is not affiliated to the SANCB's other 70 member organisations, is proposing the removal of the Amended Bill's Clause 20 (Section 19D) and appending it to the outdated principal Copyright Act 98 of 1978. In the opinion of the Alliance, this would be ill advised as the blindness sector would then not enjoy all the other the general protections and fair use accommodations afforded it in the other sections and provisions of the Amended Copyright Bill (B13B-2017).

Notwithstanding, the potential uncoupling of the Marrakesh Treaty from the enactment of the Amended Copyright Act (item 2.1 above); as well as the potential appending and alignment of key principles that accommodate the production and accessibility of copyrighted works for persons with disabilities to a revised SALB Act 91 of 1997 (item 2.2. above), the SANCB Copyright Alliance is of the opinion that both solutions provide interim domestication and actualization measures towards the fulfilment of both the UNCRPD (ratified in 2007) and Marrakesh Treaties. Thereby enabling the concluding ratification of the Marrakesh Treaty that South Africa originally signed in 2013, prior to the enactment of the Amended Copyright Bill. Whilst retaining the Bill's integrity and allowing for its due diligence processes to unfold, without compromising the rights of persons with disabilities.

As Stakeholders and Interested parties, the SANCB Copyright Alliance makes the following further recommendations and commentary on the selected Clauses and Sections:

### **3. COMMENTARY FOR CLAUSE 13 (SECTIONS 12A, 12B, 12C & 12D) – GENERAL EXCEPTIONS FROM COPYRIGHT PROTECTION**

The implementation of the untested and broad-based 'Fair Use' principles should not be misconstrued with provisions for persons with disabilities already enshrined in the UNCRPD (2007) and the White Paper on the Rights of Persons with Disabilities (WPRPD) adopted by cabinet in 2015; and accommodated in Clause 20 (Section 19D) of the Amended Copyright Bill (B13B-2017). As the definition of disability, the social model, the rights-based and mainstreaming approach as described and advocated in the WPRPD and UNCRPD means that persons with

disabilities must be considered as target groups and beneficiaries in all policies and legislation. These are also basic human rights as enshrined in our Constitution and not 'fair use' privileges.

In the event that newly authored accessible formatted works (as provisioned in Clause 13 Section 12C and Clause 20 Section 19D), whether as spoken word versions of printed works; or Audio Described (AD) sound tracks to audio visual productions; or 'fair use' transformed works, were to be used by a Library for non-commercial education and teaching purposes, or cultural entertainment by a broadcaster; and in reference to CLAUSE 20: Section 19C (1) & (7), it is assumed that such works would be permitted to be broadcast via a Digital Radio channel from a Community Radio Station, to specified rural schools and into the homes of students and persons with disabilities within a clearly demarked radio signal range.

Furthermore, since the DRM (Digital Radio Mondiale) standard is able to transmit data in the form of both audio sound broadcast signals as well as text and images (for deaf learners), it is assumed that this new 'adapted' dual form-shifting conversion of the original work, transitioning from an ageing analogue / printed technology base, to a new Digital Sound Broadcasting (DSB) radio technology platform, would be permitted without the permission of the original analogue / printed rightsholder.

Enabling this newly transformed work to be broadcast on a dedicated radio channel for the blind, since it was an accessible and transformed work that was in no way similar in format and creativity to the original printed works, to be regarded as a 'fair use' application by Libraries for the Blind and Educational Institutions, without infringing on the original printed authors copyright.

Provisions for reproduction for educational and academic activities (Section 12D) requires oversight by authorized entities which should include a public body such as a government, an institution / schools, a corporate or non-profit organisation. Section 12D item (4) The right to make copies contemplated in subsection (1) extending to the reproduction of a whole textbook, should insert an item:

“ (d) where the textbook is not available in a format accessible to persons with disabilities”

#### **4. COMMENTARY FOR CLAUSE 19 (SECTION 19B) – GENERAL EXCEPTIONS REGARDING PROTECTION OF COMPUTER PROGRAMMES**

The inclusion of software that provides access to persons with disabilities such as on mobile phone applications and software that is required for use on assistive devices for persons with disabilities should be incorporated into Section 19B. Additional provisions should include inter

alia, but not be limited to text-to-speech; screen reader software and applications as well as Digital Television and Radio broadcasting technologies for the transmission of captioning for deaf persons and sign language as well as the broadcasting and transmission of Audio Described soundtracks.

## **5. COMMENTARY FOR CLAUSE 20 (SECTION 19C) – GENERAL EXCEPTIONS REGARDING PROTECTION OF COPYRIGHT WORK FOR LIBRARIES, ARCHIVES, MUSEUMS AND GALLERIES**

The insertion of 19C provisioning specific proposed exceptions for Libraries, archives, museums or galleries endorses the SANCB Copyright Alliances' call for an addendum and alignment to the SALB Act of 1998, specifically provisioning the ratification of the Marrakesh Treaty.

A Definition of "Library" needs to be inserted under Definitions in the Amended Copyright Bill, as a library could erroneously refer to an individual's personal library collection in seeking immunity from copyright provisions. Suggested definition being:

"Library refers to a collection of materials, books or media that are easily accessible for use in the form of physical (hard copy) materials and stored electronically in a physical or virtual space, or both."

The WIPO definition of an 'Authorized Entity' as provisioned under the Marrakesh Treaty should also be incorporated in this Clause: "Authorized entity means an entity that is authorized or recognised by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organisation that provides the same services to beneficiary persons as one of its primary activities or institutional obligations."

Accommodation for Audio Description (AD) of museum exhibitions which may be maintained by both museums and libraries would also be required to be incorporated into this Clause.

## **6. CONCLUSION**

International instruments such as the Marrakesh Treaty can be enforced without necessarily having to include corresponding provisions in the national law. Many of the countries who have ratified the Marrakesh Treaty, did so prior to provisions in their existing national laws, thereby enabling the process of domestication to unfold, post-ratification. The ratification of the Marrakesh Treaty will unlock access to education, news, cultural materials and entertainment for millions of South Africans with visual impairments or print disabilities. Given that more than 10% of the population of South Africa has various forms of dyslexia, a print-disability and one third of our learners at Grade 4 and above, cannot read with meaning due to language comprehension

limitations wrought by our multiple mother tongue language heritage, the provision of accessible formats for persons with such print disabilities, has the potential to revolutionise education in South Africa and raise our dismal literacy levels. Paying it forward by the Blind.

In Conclusion, The SANCB Copyright Alliance, renews its request for audience with the Portfolio Committee for Trade and Industry to present its alternative measures towards enabling South Africa's ratification of the Marrakesh Treaty. Furthermore, urges the Portfolio Committee to insert the inclusive accommodations for persons with disabilities into the selected Clauses and Sections as outline in our commentary.

## **7. SANCB COPYRIGHT ALLIANCE ENTITY & COMMENTATORS REFERENCES**

### **7.1 SOUTH AFRICAN NATIONAL COUNCIL FOR THE BLIND (SANCB):**

**Registration: 001-422 NPO / PBO 930 001 713**

Founded in 1929 the SANCB strives to meet the needs of all blind and partially sighted people. Working with its membership of over 70 member organisations to facilitate a network of organisations throughout South Africa who collaborate towards the prevention of blindness, education and securing the full participation and inclusion of blind and partially sighted people in all aspects of a diverse society. Actively advocating for and on behalf of the varied interests of its member organisations.

**COMMENTATOR: LEWIS NZIMANDE** in his capacities as National Executive Director (NED) of SANCB; President of the South African Braille Authority (SABA); Executive member of the South African Disability Alliance (SADA); Board of Directors of the KwaZulu Natal Society for the Blind; Provincial Executive Committee member of Disabled People of South Africa and South African Disability Trust;

A lifetime dedication to the emancipation of people of disabilities with 20 years' legislative and policy experience as a member of parliament. Serving on the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Youth, Children and Persons with Disability in the National Assembly; as provincial whip at the National Council of Provinces; and later Co-Chairperson of the Joint Constitutional Review Committee in Parliament. He was Secretary General of the KZN Federal Council on Disability. He has been actively involved in government transformation and policy development, contributing to the likes of the Employment Equity Act and the Constitution. He participated at NEDLAC as a representative of disability organisations to influence policy making as well as the Section 5 Sub- Committee of SA Human Rights Commission (SAHRC). Also serving as a board member at the Southern African Federation of the Disabled People South Africa, and African Decade of the Disabled.

Qualifications: Bachelor of Education Honours from University of KwaZulu Natal

### **7.2 TAPE AIDS FOR THE BLIND**

A Non-Profit Organisation established in 1958 offering National Audio Library and Accessible Audio Book Production Services for Blind and Print-Disabled Persons. The difference between the Tape Aids Avid Readers' Audio Library and other libraries is the fact that Tape Aids produces all the accessible audio books available in their library. Having thus transformed over 40,000 book titles over the past 64 years. They migrated from analogue tape cassette formats to digital formats in 2012 and their accessible audio books are available to their members in the universal mp3 standard format with unique navigational encryption features to assist place finding by blind users and providing copyright protection. Tape Aids' Education Outreach initiatives incorporated in its Campaign "***It Takes a (Connected) Village to Educate a Nation***", provides *Hear-to-Read*

mini-libraries with accessible *Talking Books* in English and majority of South Africa's indigenous languages in rural community centres, underprivileged schools & preschools:

*Tape Aids for the Blind* previously acquired copyright permissions from Publishers and Copyright holders prior to the commencement of the Copyright Amendment Act, to transform their printed works into alternative spoken word recordings to produce accessible literary, artistic and audio-visual works.

**COMMENTATOR: ELZA-LYNNE KRUGER** in her capacities as National Executive Director (NED) of TAB; member of the SANCB National Management Committee (NMC) and National Executive Committee (NEC); elected member of the SANCB Copyright Committee and Chairperson of the SANCB Education Committee and Treasurer of the SANCB KwaZulu Natal Provincial Executive Committee (PEC); as an active member on six sub-committees of the ICT Chamber for Persons with Disabilities Working Group for Affordable & Accessible ICTs, with the following having relevance to this commentary:

- a. Accessible Broadcasting sub-committee – (Convenor / chairperson)
- b. Inclusive Education subcommittee
- c. African Digital Voices ad hoc sub-committee

She is actively involved in collaborative research and Pilot Trials in Digital Radio with Thembeke & Associates, aiding development and distance learning in rural communities through digital radio broadcasting and the establishment of digital Community Radio networks and a radio channel for the blind, using the preferred DRM (Digital Radio Mondiale) standard.

Further actively involved in collaborative Research in digital indigenous voices with CSIR Marefa Institute for Human Language Technologies (HLT) provisioning text-to-speech synthetic voices. Also, HLT technologies synchronising Tape Aids' human narrated sound recordings with printed text and words highlighted in yellow to aid dyslexic persons.

Previous employment: Managing Director of Ocean Horizon (Pty) Ltd; Managing Director of Energy X (Pty) Ltd; General Manager of African Inter-Continental Enterprises (Pty) Ltd (AICE);

Director of MWD International Limited; Director of MultiVisio (Pty) Ltd. Advisor to the Minister of Water on the National Water Advisory Committee (NWAC) for two 4-year terms (over a period of 8 years).

Qualifications: Honours Degree and Bachelor of Arts University of KwaZulu Natal. International Who's Who Society for Professionals.

### 7.3 SOUTH AFRICAN LIBRARY FOR THE BLIND

An Agency of the Department of Arts & Culture as enshrined in Act 91 of 1998, the SALB provides library and information services to blind and visually impaired readers in a medium accessible to the reader. Based in Grahamstown with mini-libraries in all provinces in South Africa, it is mandated to assist blind persons with accessing information in different formats, including braille, audio and tactile books for young learners. Its objects are to build up a balanced and appropriate collection of reading material for use by blind and print-disabled readers. Recording its collections in accessible formats and providing a bibliographic service, coordinating and preserving the national audio and braille literacy heritage by producing reading material in special accessible mediums and acquiring, manufacturing and disseminating the necessary assistive technology required to read and replay the reading material.

**COMMENTATOR: MANDLA NTOBELA** in his capacities as Chief Operating Officer (CEO) of the SALB; Member of the Governing Board of International Federation of Library Associations & Institutes (IFLA); National Council of Libraries and Information Services (NCLIS) Member; previously President of African Library and Information Associations and Institutions (AfLIA); Vice President of AfLIA; Chair of AfLIA Training Academy; LIASA President elect 2014 - 2018; National Library and Information Policy Reference Group Member; Member AfLIA Leadership Academy for public librarians; Member of International Network of Emerging Library Innovators (INELI) Sub



Saharan Africa Program; Chairperson of the Legal Deposit Committee; SALI Trust Board Member 2015 to 2018.

Previous Employment: City Librarian/Director - Msunduzi Municipal Library Services; District Manager for Parks, Recreation and Culture, Libraries and Heritage at eThekweni Municipality Principal Librarian / Deputy Manager Branch Services, Msunduzi; Assistant Librarian, Natal Society Library; Assistant Librarian, University of KwaZulu Natal Pietermaritzburg Campus and Assistant Researcher, University of KwaZulu Natal School of Psychology.

Qualifications: Master of Library and Information Studies Univ. of KwaZulu Natal; Public Relations Certificate - University of Cape Town; Honours Degree in Library and Information Science University of KwaZulu Natal; Non-degree Course - University of Illinois; Post Graduate Diploma Library and Information Studies University of KwaZulu Natal and Bachelor of Theology University of KwaZulu Natal.