



AUTHORS
ALLIANCE



July 9, 2021

Chairperson Duma Nkosi
Portfolio Committee on Trade and Industry
Parliament of the Republic of South Africa
Parliament Street, PO Box 15
Cape Town 8000
South Africa



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RE: Copyright Amendment Bill—Copyright Exceptions

Dear Chairperson Nkosi and Members of the Portfolio Committee on Trade and Industry:

Authors Alliance appreciates the opportunity to provide feedback on copyright exceptions included in the draft Copyright Amendment Bill.¹ Authors Alliance is a nonprofit organization with the mission to advance the interests of authors who want to serve the public good by sharing their creations broadly. We create resources to help authors understand and enjoy their rights and promote policies that make knowledge and culture available and discoverable.² Authors Alliance has nearly 2,000 members from the U.S. and abroad. We are pleased to share our comments on how exceptions to copyright can help authors create, use, and share copyrighted works.

General exceptions from copyright protection (Clause 13, section 12A)

Specific exceptions from copyright protection applicable to all works (Clause 13, section 12B)

Authors Alliance supports the inclusion of a general fair use exception in section 12A and the specific exceptions in section 12B. Copying, quoting, and generally reusing existing cultural material is critically important to the production of new creative works and the advancement of knowledge. In the nonfiction context, authors often need to use copyrighted materials in their

¹ Parliamentary Monitoring Group, Copyright Amendment Bill & Performers' Protection Amendment Bill Call for Comments, <https://pmg.org.za/call-for-comment/1066/>.

² For more information about Authors Alliance, see *About Us*, Authors All., <http://www.authorsalliance.org/about>.

works.³ Readers of nonfiction works expect new writing to reference and incorporate other works; indeed, the quality and integrity of nonfiction works frequently depend on the author's skillful use of such materials. Likewise, in the context of fiction, authors often need to imitate a copyrighted work to make their point. For example, a parody must imitate the characteristic style of an author or work in order to comment critically on a work in a way that is clear to readers.⁴ Providing an exemption for these types of uses can enable criticism, commentary, and illustration, among other uses, allowing authors to create new works and contribute to public discourse.

We respectfully suggest that the Committee change the language in section 12A(c) from “the source and name of the author shall be mentioned” to “to the extent it is practicable, the source and the name of the author, if it appears on or in the work, shall be mentioned.” We make this suggestion to better align the language of section 12A(c) with the attribution requirements included in section 12B, as well as to account for the situations in which it is difficult or impossible to identify the source or the author, as is the case with orphan works.⁵

Reproduction for educational and academic activities (Clause 13, section 12D)

Authors Alliance also supports the inclusion of the exceptions for educational and academic activities in section 12D. Exceptions to copyright for educational and academic activities benefit authors in numerous ways. First, these exceptions can help authors reach wider audiences. Exceptions for educational and academic activities facilitate engagement with works that users would otherwise forego due to the cost, difficulty, or even impossibility of licensing, allowing authors to reach new readers without interfering with the normal market for their works. Second, exceptions for educational and academic activities help authors build reputational capital because the uses these exceptions enable, such as the use of excerpts from a work in a classroom, signal that the author has made significant contributions to their field. These benefits are especially pronounced for academic authors, whose scholarly reputations are enhanced when their works are assigned as classroom reading. Third, exceptions for educational and academic activities can also reinforce academic authors' incentives to create because they amplify authors' abilities to contribute to the advancement of knowledge by allowing readers to more readily discover, make use of, and build on their works. These benefits are particularly motivating to academic authors, who often create works in order to share their knowledge, insights, and ideas with a new generation of learners.

³ See FAIR USE FOR NONFICTION AUTHORS: COMMON SCENARIOS WITH GUIDANCE FROM COMMUNITY PRACTICE, Authors All., (2017), available at <https://www.authorsalliance.org/wp-content/uploads/2017/11/AuthorsAllianceFairUseNonfictionAuthors.pdf>.

⁴ See Fair Use and Parody in Fiction, Authors All., Nov. 24, 2020, <https://www.authorsalliance.org/2020/11/24/fair-use-and-parody-in-fiction/>.

⁵ See U.S. COPYRIGHT OFFICE, REPORT ON ORPHAN WORKS 15 (2006), available at <https://www.copyright.gov/orphan/orphan-report-full.pdf>.

General exceptions regarding protection of copyright work for libraries, archives, museums and galleries (Clause 20, section 19C)

Finally, Authors Alliance supports the general exceptions for libraries, archives, museums, and galleries in section 19C. Exceptions for these cultural heritage institutions promote the long-term interests of authors, ensuring that their creative and intellectual legacies live on through the preservation and access efforts of these cultural stewards. Libraries, archives, museums, and galleries provide access to copyrighted works, enhancing the discoverability of authors' works and improving the chances that these works will reach the audiences for which they were intended.

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In sum, authors benefit from exceptions to copyright throughout the creative process and long thereafter. Including carefully crafted exceptions to copyright in South Africa's copyright laws will promote a vibrant creative ecosystem and serve the public good. We hope that our comments are helpful as the Members of Parliament consider the relevant sections of the Copyright Amendment Bill.

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