

13 June 2021

Mr D Nkosi
Chairperson: Portfolio Committee on
Trade and Industry
Parliament



CHELSA SUBMISSION ON COPYRIGHT AMMENDMENT BILL [B-13B of 2017]

Dear Honourable Member Nkosi

The Committee of Higher Education Libraries of South Africa (CHELSA) appreciates the opportunity to make a submission regarding Sections 12A, 12B, 12C and 12D, 19B and 19C of the Copyright Amendment Bill [B-13B, 2017].

CHELSA is representative of twenty-nine (29) public higher educational institutions, research institutions, as well as the National Library of South Africa, and is an acknowledged community of practice of Universities South Africa (USAf). Our member libraries are also members of the International Federation of Library Associations and Institutions (IFLA), which represents more than 2 million libraries in 99 countries around the world.

CHELSA strives through visionary and visible transformational leadership to ensure that the Higher Education sector is provided with optimal access to information for the purpose of learning, teaching, research, and community development. CHELSA is a non-profit organization that was established to promote the role of libraries in Higher Education, to transform the Higher Education Library and Information Services in terms of their fitness for purpose in a new era.

CHELSA was surprised and disappointed when the approved Bill of March 2019 was sent back to Parliament by the President in June 2020, on the grounds that the above Sections might not meet constitutional muster. This is indeed perplexing, especially since some of the exceptions in the Bill are already permitted in the current law in the print environment, but do not extend to the digital environment, such as resource-sharing, interlibrary loans, preservation, replacement of works, etc. What is more perplexing is that the limitations and exceptions (L & Es) in these Sections were modelled on or adapted from actual limitations and exceptions already enjoyed for decades by progressive countries around the world.

Such L & Es have never been questioned or found to conflict with any international intellectual property agreements. In addition, these Sections, and other sections of the Bill were informed by international and regional copyright and library research; DTI research and commissioned WIPO

research; WIPO studies on limitations and exceptions for libraries and archives, and WIPO studies on limitations and exceptions for education and research; and WIPO treaty proposals for libraries, archives and education (including those fully supported by South Africa as a member of the Africa Group).

Also, many of the provisions were adopted from the EIFL Draft Law on Copyright including Model Exceptions and Limitations for Libraries and their users (2016) accessible at: (https://www.eifl.net/system/files/resources/201607/eifl_draft_law_2016_online.pdf), which was drafted by IP legal and library copyright experts in various countries around the world, including South Africa. CHELSA is therefore curious to know why the same or similar L & Es were sent back to Parliament in the first place.

The Copyright Act No. 98 of 1978 (as amended) has no provisions for museums and galleries, nor for persons with disabilities. There are no provisions for libraries and archives, nor education and research in the Act itself. There are a few limited exceptions in Section 13 (Regulations), but these relate to an analogue world back in 1978, when photocopying and facsimiles were the sole modes of reproduction.

The limitations and exceptions in Sections 12A, 12B, 12C and 12D, 19B and 19C of the 2017 Bill remedy the above situation. They are welcomed and fully supported by CHELSA, as is the whole Bill. The Bill addresses the needs of modern libraries and related entities in the 21st century, including responding to the Fourth Industrial Revolution developments in our country and initiatives in our member institutions. Most of our member institutions and libraries have embarked on digitisation and digital curation programmes, and some have moved into the realm of 3D printing, productions and prosthetic innovations, augmented reality, robotics, and artificial intelligence. They have also created open access institutional repositories and/or research archives in line with the National Research Foundation's Open Access Statement. Many of them are signatories to the international Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities which commits them to promote open access and open data, where possible. All our institutions promote the use of open access and open-source resources, but also encourage their members to publish in open access publications, to enable public funded research to be available to the public and the world. These programmes and initiatives have, however, been seriously hampered, stalled, or negatively affected because of the lack of appropriate L & Es in the current copyright law. The Bill, and in particular the abovementioned Sections, will finally provide the necessary impetus for advancement of these activities for the benefit of our members and those we serve through our research, educational and library services.

CHELSA finds it strange that the very L & Es that would facilitate and help advance the SA-EU Open Science Project (including open data), co-ordinated by the Department of Science and Innovation, National Research Foundation and other research institutes in South Africa, and the DHET's Open Educational Resources Project, as well as the National Site Licensing Project for Open Access Scholarly Publishing that involves the DHET, DST, Academy of Science of South Africa, Universities South Africa, National Research Foundation and other national research bodies, were targeted for review by the President.

The above important developments and programmes in open access, open science, open research, open data and open educational resources in South Africa and with international partners, are being hampered or stalled, because the current copyright law does not address the digital world or the open content environment at all. The Bill remedies this too.

CHELSEA believes that the specific L & Es under review in Parliament in fact address the constitutional rights of access to information, education, non-discrimination, and many other rights enshrined in the Bill of Rights. They address the statutory mandates of South African libraries, archives and related entities, which have embraced internationally accepted standards that have been practised for centuries, but due to our outdated copyright law, have not been able to provide adequate services in the digital environment.

CHELSEA believes that the Bill does not conflict with the WIPO Copyright Treaty, the WIPO Performance and Phonograms Treaty or the 2013 Marrakesh Treaty, and that South Africa should accede to them as soon as the Copyright Amendment Bill is passed.

The library and educational sectors have been calling for the current copyright law to be updated and amended since 1998. The Bill is long overdue. Without the L & Es in the Bill, these entities are not able to properly carry out their daily responsibilities to provide access to knowledge, training, provision of teaching, learning and research materials, or digitise and preserve collections (including our documentary and cultural heritage) for perpetuity. The integral part that libraries and similar entities play in the role of education and research cannot be emphasised enough. The symbiotic relationship between tertiary institutions and their libraries and other information services is crucial to access to knowledge, innovation and socio-economic development in our country.

The exceptions under review will bring libraries, archives, museums and galleries into the 21st Century and enable them to digitise, preserve, format-shift and convert material to ensure our documentary records and cultural heritage are preserved and made accessible for future generations. You are aware of the dreadful fire in April 2021 that caused the loss of our precious cultural heritage collections at one of our member institutions, the internationally recognised University of Cape Town's Jagger Reading Room. This tragic event should be a clear message to Parliament and the President that libraries and archives, galleries and museums, urgently need the L & Es in the Bill, so that our priceless collections and cultural heritage can be preserved for future generations.

CHELSEA therefore urges Parliament to approve the limitations and exceptions under Sections 12A, 12B, 12C and 12D, 19B and 19C, and all other sections in the 2017 Bill, and to refer the Bill back to the President for assent as a matter of urgency.

Thank you.

Regards

