



To: Portfolio Committee on Trade and Industry

Brussels, July 7 2021

Re: Copyright Amendment Bill [B13B-2017]

Dear Sir or Madam,

The following document provides COMMUNIA International Association and Wikimedia Deutschland' comments on the Copyright Amendment Bill [B13B-2017]. We thank you for the opportunity to provide our feedback at this stage.

1. Statement of Interest

COMMUNIA is an international association incorporated under Belgian law whose mission is to foster, strengthen and enrich the Public Domain. We adopt a broad definition of the public domain that includes works that are not protected by copyright (because they have never been protected or because copyright protection has expired), as well as use rights created by open licensing practices and limitations and exceptions to copyright¹. COMMUNIA aims at maintaining and reinforcing a network of European and international activists, researchers and practitioners from non-governmental organizations that work to inform policy discussions and strategic action on all issues related to the public domain, namely open copyright rules.

COMMUNIA has been actively involved in copyright reform advocacy. Since COMMUNIA is composed mainly of European members, our primary focus has been to advocate for improvements to the EU copyright framework, while at the same time building broader, global awareness and support for the cause. Our international advocacy work in this area has been conducted mainly through participation, as permanent observers, in the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization, including in its recent regional meetings on exceptions and limitations to copyright. Our activities include publications, meetings, conferences, projects, consultations, studies, research, representation towards institutions, collaboration with other associations and entities in Brussels, in Europe and worldwide.

¹ Our definition of the public domain has been codified in the Public Domain Manifesto that we authored and published in 2011 and that has been signed by more than 1500 organisations and individuals. See <https://publicdomainmanifesto.org/>



Wikimedia Deutschland is a non-profit association under German law and a member of Communia. It is the German chapter of the global Wikimedia Movement, which seeks to empower and engage people around the world to collect and develop educational content under a free license or in the public domain, and to disseminate it effectively and globally. Wikimedia Deutschland is particularly committed to promoting Free Knowledge projects, such as Wikipedia and Wikidata.

2. Proposed exceptions are compatible with international and EU standards

We believe that the proposed exceptions to copyright, contained in the Copyright Amendment Bill, are compatible with the international standards. The various exceptions that the Copyright Amendment Bill proposes to introduce are similar or compatible to those contained in various legal instruments, namely the Berne Convention, the EU Copyright Directives and many national laws.

For example, the Bill's quotation exception (in Section 12B(1)(a)) has been said to be incompatible with international standards because it does not list the permitted purposes. However, the quotation exception in Article 10(2) of the Berne Convention also does not specify for which purposes can the quotations be made. The same approach is followed in the Nordic countries, where the quotation exception is presented as a "relatively open rule of reason", whose only requirement is that the quotation is made "in accordance with proper usage", without enumerating the purposes for which it can be made².

3. Exceptions for education and research

Another example where South Africa's proposed exceptions seem to draw inspiration from different national and international laws is with regards to education and research (Section 12B(1)(b) and 12D). There are various examples in the Bill for education and research that are already incorporated in the copyright laws of many countries around the globe. For instance, the education exception in Section 12B(1)(b) has exactly the same wording as the educational exceptions in the Berne Convention (cf. article 10). The education exception in Section 12D has as many limitations as the educational exceptions in the EU Information Society Directive (cf. article 5(3)(a)): (i) it only allows copies for educational purposes; (ii) it only allows the work to be copied to the extent justified by said purposes; (iii) and it does not permit copies for commercial purposes. In addition, when the exception allows for those copies to be incorporated in

² See Teresa Nobre, Best Case Scenarios for Copyright: Quotations in Finland (COMMUNIA, 2016) (pages 2-4), available at <https://www.communia-association.org/wp-content/uploads/2016/07/report-4-quotations.pdf>

materials to be used in digital learning environments, it limits the beneficiaries of the exception (only educational institutions are covered) and it also introduces technological limitations (the uses must take place in secured networks accessible only by educators and learners), similarly to what is prescribed by the new EU Copyright in the Digital Single Market Directive (cf. article 5). Furthermore, it should be said that the fact that the exception is not subject to compensation does not make it incompatible with international standards. Out of 27 EU Member States, 18 allow all or most educational uses without the payment of compensation.

4. Temporary reproductions

The provisions in Section 12C of the Copyright Amendment Bill, allowing temporary reproductions, are also following international standards and drawing inspiration from other national laws. The need for such an exception has long been recognized in the EU, where the exception for transient copies in the Information Society Directive (cf. article 5(1)) was, until recently, the only EU-wide mandatory exception in the region. Such an exception enables browsing and other acts that enable transmission systems to function efficiently and end-users to view copyright material on the internet, being therefore essential in the digital age.

5. Contact Information

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