

2 July 2021

Dear Mr. D. Nkosi, Chairperson: Portfolio Committee on Trade and Industry, Parliament, Cape Town

Re: Copyright Amendment Bill [B-13B of 2017] - Submission

I am writing in my personal capacity as an academic and Professor at the University of South Africa. I am also a scholarly author, editor, reviewer, supervisor of postgraduate students, member of various international committees, and IT and scholarly data management specialist.

I would like to commend the Department of Trade and Industry and Parliament for their efforts to update our very outdated Copyright Act of 1978, but it is unfortunate that the above Bill still has not been enacted. I appreciate the opportunity to make comments on selected sections of the Bill.

I fully support the Sections 12A to D, and Section 19 B and C, for the following reasons:-

- **Current Copyright Act is non-functional:**

In my various abovementioned roles, I have found the current copyright law to be extremely restrictive or prohibitive, in fact it is non-functional. My work and scholarly responsibilities and those of my colleagues and students are hampered daily by the lack of exceptions to address our needs in the digital era. There are no exceptions for sharing journal articles or book chapters in course-packs (print or electronic) for students, or for digitisation, digital curation, scanning, format-shifting, conversions from old to new technologies as they evolve, resource-sharing via online platforms, USB flash-drives, email, or social media, etc.

Copyright clearance is necessary before engaging in any of the above activities. This often involves high copyright fees and applying and waiting for responses from rightsowners, many of whom do not respond. This means alternative material must be found to substitute those items.

I am aware that most tertiary institutions pay millions of Rands annually for printed and electronic resources to publishers (mostly international), and then millions more to the local reprographic reproduction organisation for copyright fees for material (often from already paid-for electronic databases) which they provide to students in coursepacks or via elearning platforms. This has been the practice for decades as the cost of textbooks and other reading material in South Africa is well above the budgets of most students in South Africa. Many students are distance-learners or do

not have internet facilities or data at home, so paper-based course-packs are printed to ensure they receive adequate study materials.

Something that is crucial for research (especially in the pandemic), and of course missing from the current law, is the ability for researchers to access and share journal articles, data, content from books, conference papers and other scholarly publications around the world, as well as do text-and-data mining (TDM). It is impossible to do proper online research without TDM. In fact, it was through TDM that the original COVID-19 virus was discovered. It is also through these technical and necessary processes that researchers will be able to do further research to find more effective vaccines and other solutions to eradicate COVID-19 pandemic and fight future pandemics, and to address other issues, such as climate change, conservation, etc.

With ongoing research programmes in universities and the advances in AI, augmented reality, robotics, 3D technology, and digital curation the current copyright law is inadequate and a hindrance to academic research.

Projects relating to open access, open science, open data and open educational resources within the tertiary sector, as well as projects between the SA Government and the EU and other countries, are also negatively affected by the outdated current law. In 2015, the National Research Foundation published its Open Access statement which required its grantees' research and publications to be made accessible via open access institutional repositories, but the copyright law does not permit this without permission from rightsowners. Recently, the Minister of Communications and Digital Technologies called for comments on the National Data and Cloud Policy, which is welcome, but the national copyright law is still stuck in the pre-internet era.

- **Copyright Amendment Bill – Sections 12 A to D and 12B and C:**

The abovementioned Sections of the Bill are long overdue. They will resolve many of the above issues. Fair use and the exceptions for education, libraries, research, archives, museums and galleries (key custodians of knowledge and cultural heritage centres) will vastly increase access to knowledge and enhance research and educational activities. South Africa's copyright law will finally be aligned with other advanced economies/countries that have similar copyright exceptions.

- **Compliance with international agreements:**

Although I am not a lawyer, logic tells me that because the Bill was informed by legal international treaties, IP research and other documents, and actual clauses from copyright laws around the world, then it must be compliant with international copyright agreements.

I hope that my comments will be considered in your Committee's deliberations after the 9th July 2021.



I look forward to an updated Copyright Act soon – one that meets not only the research needs and demands of the 21st century, but also those of the Fourth Industrial Revolution (4IR).

Thank you

Sincerely,

