

By email:

09 July 2021

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Hon Mr. D Nkosi,
Chairperson: Portfolio Committee on Trade and Industry,
Parliament of the Republic of South Africa

Attention: Mr A. Hermans, Ms M. Sheldon, Ms. Y. Manakaza, Mr. T. Madima

90 Plein Street,
Cape Town
8001

“Without prejudice”

Dear Honourable Chairperson

NLSA SUBMISSION ON COPYRIGHT AMENDMENT BILL

Thank you for allowing the National Library of South Africa (NLSA) to make comments on Sections 12A, 12B, 12C and 12D, 19B and 19C of the Copyright Amendment Bill, and on the compliance of the Bill with international Intellectual Property Treaties.

ABOUT NATIONAL LIBRARY OF SOUTH AFRICA:

The National Library of South Africa (NLSA) is the statutory agency of the Department of Sport, Arts & Culture of South Africa and a member of the International Federation of Library Associations and Institutions (IFLA). The NLSA is the custodian of South Africa's collective national heritage materials and the national depository of published output materials in the country. The NLSA is mandated by the National Library of South Africa Act, no 92 of 1988

to collect and preserve published documents and make them accessible to all and to ensure that knowledge is not lost to posterity. The National Library of South Africa, as we know it today, was formed on 1 November 1999, as a result of the amalgamation of the two former national libraries: the South African Library in Cape Town and the State Library in Pretoria. The collections of the NLSA contain a wealth of information, including rare manuscripts, books published in South Africa, periodicals, government publications, official foreign publications, maps, technical reports, Africana and newspapers.

CORE FUNCTIONS OF NLSA:

The National Library of South Africa's core functions include:

- Build a complete collection of published documents emanating from or relating to South Africa.
- Maintain and extend any other collections of published and unpublished documents with the emphasis on documents emanating from or relating to Southern Africa.
- Promote the optimal management of collections of published documents held in South African libraries as a national resource.
- Render a national bibliographic service and acting as the national bibliographic agency.
- Promote optimal access to published documents, nationally and internationally.
- Provide reference and information services, nationally and internationally.
- Act as the national preservation library and provide conservation services on a national basis.
- Promote awareness and appreciation of the national published documentary heritage; and
- Promote information awareness and information literacy.

GOVERNMENT COMMITMENT TO LIBRARIES AND INFORMATION SERVICES

Minister of Sport, Arts and Culture, Mr Nathi Mthethwa, with many other African Ministers, has committed to the support, resources, and development of libraries, to enable them to drive the UN 2030 Sustainable Development Goals and the AU Agenda 2063. They have also committed to fair and balanced copyright laws. These commitments were officially endorsed in their Cape Town Declaration¹ in August 2015 and the Durban Communiqué in 2018.²

COPYRIGHT AMENDMENT BILL PROVIDES ENABLING FRAMEWORK

The NLSA believes that the Copyright Amendment Bill will provide an enabling and practical framework for libraries, archives, museums and galleries, as well as educational institutions and researchers to do their work in the digital era. It will help increase access to knowledge and enable them to engage in valuable resource-sharing for development and innovation purposes. It will ensure our historical memory and cultural heritage will be collected by libraries, archives, museums and galleries and will be digitised and preserved for the benefit of all South Africans now and for the future. The Bill also creates an enabling environment for authors, creators and publishers to use and reuse the collections of the NLSA and other libraries and archives, so as to produce new knowledge, inventions, artworks, creations, digital products, etc. It will also enable our many users with disabilities to engage and use our collections through the fair use provisions, education and research exceptions, and the exceptions that will allow access via Braille and other accessible formats for education, leisure, employment and other purposes. The Bill also has many other appropriate exceptions and limitations which will finally bring South Africa into the 21st century.

NLSA AND THE PARLIAMENTARY REVIEW

¹ <https://www.ifla.org/node/9767>

² https://cdn.ymaws.com/www.liasa.org.za/resource/resmgr/documents /2018_ministerial_roundtable.pdf

The NLSA has followed the process of the Copyright Amendment Bill since it was first published for comment in 2015. We were extremely disappointed and surprised when the Bill was referred to Parliament for review in 2020, after such a long delay. We were shocked when we found out that the President had sent back all the exceptions for libraries, archives, museums and galleries (Section 19B and C) and those for fair use, education and research in Sections 12A, B, C and D), suggesting they would not meet constitutional muster. These exceptions are urgently needed for the NLSA, other libraries, archives, museums and galleries, as well as the research and educational sectors.

NLSA SUPPORTS SECTION 12 A TO D

The NLSA fully supports Sections 12A, B, C and D and urges Parliament to approve and pass them without further delay. The fair use clause and exceptions are extremely useful. They will help the NLSA to increase accessibility to its vast printed and electronic collections, and legal deposit resources. They will also assist the NLSA in its teaching and learning services, literacy and training programmes, legislative documentary services, research assistance and the many other important services we offer to the public and Government. The NLSA has an obligation to continue to provide information services even under the different levels of COVID-19 lockdown Regulations which restricts access to our premises. The NLSA has had to package services by making copies or scanning information required by the library patrons and send it via e-mail.

Ability to scan and copy works and send it via electronic platforms for research, educational and developmental purposes will also make it possible for those who cannot afford to travel to our campuses in Cape Town and Pretoria to access the documentary heritage collections held in the NLSA no matter where they are in the country. People with visual disabilities are also restricted from accessing our collections due to the current Copyright Law.

The NLSA is also embarking on mass digitisation of its collections in order to preserve it and to make it accessible via the website under the fair use

principles. Section 12 exception enables the NLSA to preserve the works that are excluded under the current Act. Libraries across all sectors rely on inter-lending services to share resources. This is an essential service where there are budget cuts and none of the libraries are able to procure all the materials they require to satisfy the information needs of their users. IFLA has mandated all National Libraries to provide document and information sharing schemes for their countries. The NLSA is the coordinator for the South African Inter-lending scheme which benefits mostly libraries that cannot afford subscriptions in South Africa. There are 580 libraries that are subscribing to these schemes. NLSA has a responsibility to report to IFLA on these services on annual basis.

The NLSA knows that many of these exceptions come directly from or have been adapted from copyright laws in many developed and some developing countries. They also were informed by WIPO Studies on Limitations and Exceptions for Education in 3 world regions, including Africa, and other WIPO IP agreements and research. These exceptions will help to kickstart many necessary projects and services or enhance ones already in the process. They will also provide better accessibility to our users during the COVID lockdown periods, while the NLSA and other library and information services are closed or only offering limited services.

NLSA SUPPORTS SECTION 19B AND C

The NLSA fully supports Section 19B and C and urges Parliament to approve and pass them without further delay. These are the minimum requirements that libraries, archives and related entities need to function in terms of their statutory mandates, not only in the print environment but the electronic environment too. These exceptions were adopted from the internationally recognised EIFL Model Law on Copyright and many other international documents. Many countries around the world have such exceptions and this was corroborated in the WIPO Studies on Limitations and Exceptions for Libraries and Archives. The current copyright law is so outdated and has so few exceptions for libraries and archives and they only apply to the printed environment. It has no exceptions at all for museums and galleries, which are

centres and custodians of South Africa's cultural heritage. The NLSA welcomes these new exceptions in the Bill, which will enhance the extremely important work that museums and galleries do in South Africa and their specialised services to researchers, historians, educational institutions, tourists, and others. The provisions for preservation for libraries will allow digitisation and digital curation, something obviously lacking in the 1978 Copyright Act.

MOTIVATION FOR URGENT ACTION ON THE BILL

The NLSA has been involved in a digitisation programme for many years, but the current copyright law has proved to be a serious barrier. Permission and high copyright fees in most cases, are required before copyright works can be digitised for preservation or better accessibility. Sharing of resource via digital formats and online is hampered by the lack of exceptions in the current copyright legislation. The NLSA is the custodian of the country's publications and resources, and Government publications, and many international works as well. Some works are not available in any other library in the country. Digitisation and digital curation are essential for the accessibility and ongoing preservation of our collections as technologies change.

A big wake-up call for all libraries, archives, museums and galleries was the devastating fire at the University of Cape Town in April 2021. The entire African Studies collection and archives (mostly originals) and thousands of irreplaceable documents, DVDs, and artefacts were destroyed. Our cultural heritage literally went up in flames. Had the copyright law been more progressive, the UCT Jagger Reading Centre (used by researchers around the world) could have digitised their entire collections over many years. At least the collections would still be accessible, albeit in digital format. Today, there is no record of them they are lost forever. The exceptions in Section 19D are extremely urgent, so that no other library, archive, museum or gallery suffers the same fate, and our cultural heritage is protected for future generations.

NLSA would like to place on record that the ongoing stalling of the Copyright Amendment Bill is also delaying the National Digitisation Policy and many of

the strategic plans set out in the Library Transformation Charter and the National Policy for Library and Information Services in South Africa (2018). The Open Data and Cloud Policy was recently circulated for comment but will need to align with some of the provisions in the Copyright Amendment Bill. In addition, the amendments proposed in the Third Cultural Amendments Bill of 2008 by the Department of Arts and Culture had to be split into Phase 1 (technical issues) and Phase 2 (because certain amendments can only be done once the current Copyright Act is updated). These are the pieces of legislation included in the Third Cultural Amendments Bill³ :-

1. Culture Promotion Act, 35 of 1983
2. Cultural Institutions Act, 119 of 1998
3. National Heritage Council Act, 11 of 1999
4. National Heritage Resources Agency Act, 25 of 1999
5. South African Geographical Names Council Act, 118 of 1998
6. National Library of South Africa Act, 92 of 1998
7. South Africa Library for the Blind of South Africa Act, 91 of 1998
8. Legal Deposit Act, 54 of 1997
9. National Council for Library and Information Services Act 6 of 2001
10. National Arts Council Act, 56 of 1997
11. National Film and Video Foundation Act 73 of 1997

Most of the above laws cannot be updated in Phase 2, until the Copyright Amendment Bill has been enacted. The delay in these amendments has a detrimental effect on the functions of the NLSA and other library and information services in South Africa, but also those of heritage and related entities.

COMPLIANCE WITH INTERNATIONAL TREATIES

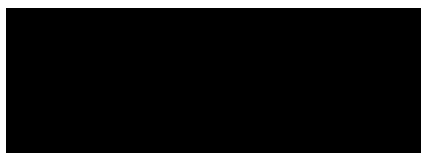
³ https://www.gov.za/sites/default/files/gcis_document/201409/gg31082nn652pg3-61.pdf

Many of our library and archive colleagues in developed and some developing countries already benefit from the limitations and exceptions in the above Sections of the Bill. The NLSA also knows that the limitations and exceptions were adopted from their copyright laws, as well as international and regional IP documents and research reports. Since South Africa has already agreed to accede to the WIPO Internet Treaties and it is hoped that it will soon accede to the 2013 Marrakesh Treaty, the NLSA can only conclude that the Bill is aligned with our Constitution and international treaties, and in fact, we believe it provides a model copyright law for other countries.

WTO TRIPS WAIVER

The NCLIS is aware that South Africa, with India, has proposed a TRIPS Waiver at the World Trade Organization. Many academics and educational institutions as well as library organisations and individuals have supported this Waiver. This Waiver will not only apply to patents but will have to extend to copyright as well, to enable research and text and data mining through the abovementioned Sections to be conducted, especially for research related to COVID-19 and all its variants. The NLSA believes that many of the exceptions in the Bill will facilitate intercontinental research, innovation and inventions in this regard.

Yours truly,



Mr. Kepi David Madumo
National Librarian /Chief Executive Officer of NLSA