



28 January 2022

To: Mr. A. Hermans,

The Portfolio Committee on Trade and Industry

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

Per email: ahermans@parliament.gov.za ; tmadima@parliament.gov.za ;
msheldon@parliament.gov.za and ymanakaza@parliament.gov.za

Dear Mr. Hermans,

Re: Copyright Amendment Bill [B13B-2017]

Our sincere condolences on the passing of your Chairperson, Mr. Nkosi.

Creative Commons SA contributed to comments on the above Bill during 2021 and confirmed our support for it at that stage. We thank you for a further opportunity to comment on additional provisions to the Bill, with specific reference to new definitions, new clauses and proposed substantive amendments to existing clauses.

However, we are dismayed to find that a whole batch of new restrictions have been included in the Bill for this round of comments. We believe these restrictions will be detrimental to:

- access to knowledge,
- education and research,
- open access and open science programmes,
- libraries and other information services, and
- disabled communities.

Of particular concern to us are the following sections, which we believe need to be rectified as a matter of urgency:

1. **Spelling in the Bill** – We propose that standard SA/UK English be instead of US English spelling.
2. **Section 12A** – The deletion of (i), (iv) and (vi) makes the Fair Use clause harder to use by teachers, learners, and researchers and removes important examples that would give clarity to users when using/reproducing copyright works.

Recommendation: The explicit examples should remain in Section 12A.

3. **Section 12A(d)** – imposes conditions of fair use, fair practice and even the 3-step test onto Sections 12A,B,C and D and Section 19B and C which already have their own limitations. The result is that these become extremely difficult if not impossible for teachers, learners, and others to use. These create substantive barriers and are impractical and unfair for anyone to have to analyse before being able to make any copies.

Recommendation: Section 12A(d) should be deleted.

4. **Section 12B(1)(a)(i)** – restricts personal copying to the extent that copying would be impossible if the works are not either bought or gifts or paid-for downloads. This would create major problems for access to knowledge, educational material, inter alia. It would also conflict with the principle of non-retrogression because it removes personal use rights in the current copyright law.

Recommendation: Remove the definition and use of 'lawfully acquired' in the Bill, and remove reference to fair practice in Section 12B(1)(i).

5. **Section 19D3** – puts the onus on authorised entities with regard to accessible formats to use their limited resources to try to ensure that only disabled persons will get copies. The Marrakesh Treaty requires only that they should not export or import if they actually know or have reason to know that someone is going to benefit who is not disabled.

Recommendation: Delete the proposed amended wording and replace them with the relevant text from the Marrakesh Treaty.

6. **Section 19C(4)** – prohibits reproduction, creating a serious problem for access to knowledge, especially in the pandemic where remote teaching has fully or partially replaced the physical lecture room.

Recommendation: Amend this section to at least permit copying for educational and non-commercial purposes.

7. **Technological Protection Measures**

The proposal to delete the second part of the definition of technological protection measures will make it more difficult and dangerous for people using exceptions and limitations to do so because it makes engaging in circumvention to exercise lawful uses into a criminal offence unless it falls into the very narrow provisions of Section 28P.

Together with the proposal to add negligence to intention as a basis for criminal liability for offences connected to technological circumvention measures this vastly expands the criminalisation of people using their own property, music, and books that they have bought and paid for but are prevented from using by software restrictions.

Ordinary people will be deterred from making use of the exceptions and limitations that Parliament is introducing into copyright law because of the threat of criminal liability.

Creative Commons SA calls on the Portfolio Committee on Trade and Industry to resolve the above problems before the Bill proceeds further.

Yours faithfully,

A solid black rectangular box used to redact the signature of Paul G. West.

Paul G. West

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