



<https://www.linkedin.com/in/ilseassmann>

28 January 2022

Mr. Hermans  
Parliamentary Committee of Trade and Industry,  
Parliament,  
Cape Town

Dear Mr Hermans

**Re: Proposed amendments to the Copyright Amendment Bill**

I write today in relation to proposed amendments to the Copyright Amendment Bill.

I am an internationally respected Sound and Audiovisual Archives expert and started my career in 1985 at the SABC Radio and later TV News Archives. In 2013-2018 I was hired by M-Net to establish its digital Television Archives, which we did. I am a former member of the Legal Deposit Act Committee. I am currently a member of the information and archival society of South Africa, as well as LIASA, and play an active part in international associations and activities. I am a former President of IASA (the International Association of Sound and Audiovisual Archives) and Board Member of the Coordinated Council of Audiovisual Archives Associations. As a broadcast archivist, it was essential to understand the copyright act and to understand contractual obligations, especially in terms ownership/authorship and third party agreements. I am therefore familiar with copyright issues pertaining to broadcast archives and sound and audiovisual materials.

I am very disappointed and surprised to see the new proposed amendments that attempt to override or dilute many of the helpful exceptions in the 2017 version of the Bill for personal copying, fair use, libraries and archives, museums and galleries, as well as for education and academic activity, and for persons with disabilities. The new proposed amendments create unnecessary barriers to access of knowledge. In some instances, they are particularly onerous, which was not the original purpose of this Bill.

By adding one set of conditions on top of another is an over-extension and an attempt to restrict or prohibit access to copyright works without permission. I have the following questions and comments:

1. **Clause 1 – Performers’ Protection AB** (a) Why is the term ‘wire’ deleted when the rest of the CAB refer to ‘wire or wireless’?
2. **Clause 13 – Copyright AB** Sections 12B,C and D and Section 19B and C all have specific

conditions in their sections and are weighed down with tedious criteria before any material can be used or reproduced, in contradiction to the idea of Fair Use. Section 12B is/seems to be a replication of performance contracts that existed between broadcasters and performers/producers. It does not make sense that contractual obligations are brought into law, especially since bringing these obligations into law restricts both the performer and the broadcaster in terms of fair usage.

I simply do not understand how Section 12A (a) (i), (iv) and (vi) are proposed to be removed from the CAB, but (ii), (iii), (v) and (vii) remain valid. The removal of Section 12A (vi) is particularly baffling as it potentially impact on the preservation of our cultural heritage. Due to similar contractual restrictions much of our cultural heritage has been destroyed already.

3. Clause 13 Section 12B(1)(vii) refers to 'official archive' and 'exceptional documentary character'. Unless clearly defined these referrals have no meaning. As a broadcast archive specialist/archivist, I find these provisions prescriptive in terms of where the fixations and reproductions are placed, and find the idea that previously cumbersome contractual obligations have now found its way into the CAB. It is specifically of concern since material which may represent South African heritage will be lost again e.g. recorded live concerts of South African musicians with a contractual obligation to destroy the material 30 days after of the broadcast date unless an 'official archive' exists. What defines an 'official archives' and who will be responsible for setting up the archives and manage them. What funding will be available for the purpose of such an official archive. No information is provided to explain how this 'official' archiving will function and how materials of a cultural, educational and research nature with heritage value will be saved from destruction and preserved long-term.

Equally confusing is the term 'exceptional documentary character'. What exactly determines 'exceptional documentary character' of a work? Who will be designated to make this decision and what is meant in this instance by 'the broadcaster'? Archivists are the best qualified to select material for preservation due to their expertise and the nature of their work.

This could also negatively affect the process of legal deposit which is a statutory requirement for multimedia. Depending on who is responsible for this, it could lead to biased or incorrect decisions by the broadcaster and/or institution which has no knowledge of the importance of preserving our local heritage and may lead to the loss of valuable documentary records and cultural heritage as has happened in the past.

4. Finally, it is of considerable concern that no mention is made in the CAB to the retention of ownership once materials have been digitised. The CAB and copyright experts assume that the original author will remain to be the author of the digitised materials. However, too often our photographers see their work digitised and published, only to discover that ownership has changed to the institution or person that digitised their work due to the digitisation process which adds new or changes information. Ownership of digitised materials must be clearly defined to protect the original owner/author. The CAB should take note and address the matter.

In principle, the Sections relating to Technological Protection Measures were not part of the Parliamentary review and should not be considered. International experts advise South Africa not to adopt similar provisions from the US DMCA, as it has been a major problem for the US and has had many unintended consequences. It is not recommended for any developing country and from my perspective was not the original intention of the CAB. The original intention of the CAB was to democratise the Copyright Act 98 of 1978 and to align the Bill to our Constitution.

Thank you for allowing me to make these comments on the Bill. I hope these problem areas in the Bill will be remedied as soon as possible.

Yours sincerely,

Ilse



Director: Apricity Consulting  
*Media Information & Broadcast and Audiovisual Preservation Consultant*  
*M.Com Business Administration, Management and Operations (Specialisation in*  
*Information and Knowledge Management): University of Johannesburg, South*  
*Africa*