



RIGHT2KNOW

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R2K Statement on CAB submission (Re- Freedom of expression and Retrospective provision):

The Right 2 Know Campaign submits its CAB submission as our position on the bill has not changed thus please receive the R2K 2021 submission on the copyright amendment Bill in which we present our deep concerns regarding some of the newly made proposed changes as some according to our understanding were not part of the President reservation list and of which some as a public we are restricted to comment as we realise their negative unintended consequences they will have to communities especially the disadvantages communities we represent, and they will still impact negatively even the advantaged communities alike.

The Right2Know Campaign (R2K) is a nation-wide coalition of people and organisations concerned with promoting openness and the free flow of information, particularly the right to access information and freedom of expression.

The R2K's campaign is coordinated through voluntary working groups in the Western Cape, Gauteng, KwaZulu-Natal, as well as an elected national working group consisting of representatives from key civil society organisations, community groups and social movements across the country.

R2K's vision is to seek a country and a world where we all have the right to know – that is to be free to access and to share information. This right is fundamental to any democracy that is open, accountable, participatory, and responsive; able to deliver the social, economic, and environmental justice we need. On this foundation, a society and an international community can be built in which we all live free from want, in equality and in dignity. R2K would like to thank the Portfolio Committee of Trade and Industry for the opportunity to make a written submission regarding specific clauses of the Copyright Amendment Bill [2021] released for public comment yet again.

Our Concerns with the current newly Amendments in the Bill:

We applaud the portfolio committee for seeking to amend the 1978 bill that was created during the apartheid regime, which meant that the bills and laws of this regime were extremely full of hate and sought to undermine others and not allow others to gain fairness with regards to economy, similarly these laws sought restrict access to certain members of our population, specifically what they termed poor working-class communities. The Copyright bill of 1978 is an unjust and unfair law as it as it sought all kinds of restrictions to research, education, and freedom of expression (which is our

main focus as an organisation). We are also unhappy in that artists have been dealt the worst unfairness regarding this law. It is this reason we applaud and appreciate the portfolio committee for seeking amendments so that we correct the wrongs of these past unjust laws

1. Retrospective provision concern:

What we would like to emphasise categorically, as The Right To Know campaign is that, we stand by the decision of correcting the wrongs of the past and by all means we ask that at this point we should not by any means defeat the purpose of this bill which we believe seeks Justice and Fairness

- We are concerned for artists because the royalty right no longer explicitly applies to contracts concluded before the amendments go into effect. As a result, artists will suffer in the future if their copyright works continue to earn profits for the companies who often paid artists paid them very badly for their work.
- We like to remind the committee that there are actors/ actresses and musicians who had to sign unjust and unfair previous contracts and have worked for several years, some are no longer with us as they have since passed on. We cannot expect them not to have their Justice served fairly. Applying the royalty right to all copyright works that continue to earn money, sometimes a great deal would have seen them, and their families justified. The Copyright legislation will remain unjust when it leaves those artists uncompensated is on many levels and it will purely defeat the very purpose of the portfolio committee regarding this bill
- We ask you to reconsider bringing back the retrospective provision of 2017 as it is. However, if this is not done then another way must be found so that artists are not deprived of the ongoing profits from their own work.

2. Freedom of expression in respect of Fair Use

Only with a strong Fair Use clause can we achieve freedom of expression

- A strong Fair Use clause is a clause that supplements and compliments the specific exceptions, that may also be in the law. That way where a particular use is not covered in a specific exception, users may have recourse in the Fair Use clause.
- We like to see the the purposes of word Research and Personal copies use remain expressly states in the Fair Use clause.
- We advise the committee to keep all the existing examples of Fair Use, vViz 12A(al) (i, (iv) and (vi),
- Remove the new proposed 12 A (d). The fair use four factor analysis is appropriate for fair use but the more specific limitations and exceptions have internal balancing factors that

coupled with fair practise sets an appropriate balance for those specific exceptions and limitations.

3. Other Concerns in respect of Freedom of Expression

Technological Protection Measures:

The TPM provisions in CAB as previously passed by Parliament could have been less invasive of fundamental rights. However, the CAB did achieve a balance between TPM's and the ability of South Africans to use works under the exceptions and limitations that uphold fundamental rights. Now however changes to CAB in respect of technical protection measure threaten the balance previously between achieved in the CAB between permitting exceptions and limitations and supporting the use of TPM's. This threatens freedom of expression because the technologies used for expression can be criminalised.

The proposed deletion of the second half of the definition of a technological protection measure limits freedom of expression because it makes technologies used for expression presumptively illegal. Owners and users of technology will not be able to access and obtain many technologies necessary for expression, including both technologies for exercising exceptions and limitations and technologies that have other uses. Section 28P (1) applies only to technological protection measures circumvention devices, removing the second part of the definition criminalises some acts in respect of technological protection measures that do not involve circumvention devices.

The proposed expansion of the definition of 'technological protection measure circumvention device' to include a device or service 'promoted, advertised or marketed for the purpose of circumvention of a technological protection measure' infringes freedom of expression. Since the definition already covers devices that are used to circumvent technological protection measures the only purpose of prohibiting advertising must be to prohibit speech about devices that do not in fact circumvent technological protection measures unlawfully. The result is to limit freedom of expression without a good reason and is therefore unconstitutional.

- Retain the second part of the definition of technological protection measures to exclude technologies, services etc that enable use for exceptions and limitations.
- Do not expand the definition of 'technological protection measure circumvention device' to include proposed (b) and (c).

Section 19C

The proposed changes to section 19C(4) are problematic, prohibiting copying by students and others conducting research and educational activities.

- Delete the phrase 'but may not permit a user to make a copy or recording of the work' from section 19D.

Conclusion

The proposal is to include in the definition of technological Protection measure circumvention device advertising, a product that is Contrary to Freedom of Expression.

We hope for a strong Fair Use clause and Retrospective provision of our Copyrights Amendment Bill, as we truly seek to correct and eliminate the Injustices and unfairness of the past. Only Just and Fair laws will move our beautiful country forward in unity.

We also intend to do an oral submission please do consider us for a slot.

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NB: Please attribute all contents of this statement to the Right2Know Campaign, not to any individual unless you contact a spokesperson for specific comments.