

28 January 2022

The Late Mr D Nkosi
Late Chairperson: PC on Trade and Industry
Attention: Mr A Hermans
Box 15 Parliament
Cape Town 8000

Email Transmission - Secretariat:

[REDACTED]

THE PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY'S CALL FOR PUBLIC SUBMISSIONS AND COMMENTS TO "HAVE YOUR SAY" ON SPECIFIED ADDITIONAL PROVISIONS OF THE COPYRIGHT AMENDMENT BILL [B13B-2017] UNDER CONSIDERATION AS OF DECEMBER 2021

SUBMISSION BY THE FOLLOWING TWO REPRESENTATIVE ENTITIES & COMMENTATORS:

1. **SOUTH AFRICAN NATIONAL COUNCIL FOR THE BLIND (SANCB)** – Commentator: Mr Lewis Nzimande (NED of SANCB)
2. **TAPE AIDS FOR THE BLIND (Tape Aids)** – Commentator: Ms Elza-lynn Kruger (NED of Tape Aids) & Member of the National Management Committee (NMC) & NEC of SANCB

Refer to Profiles for Entities & Commentators at the end of this document.

1. INTRODUCTION:

The SANCB and Tape Aids thanks the Portfolio Committee for the opportunity to "*Have Our Say*" in commenting on specified additional provisions contained in the Copyright Amendment Bill whilst acknowledging our previous **SANCB Copyright Alliance** submission presented on 8 July 2021 regarding the Committee's Call for Comments on Specific Clauses at that time.

We are appreciative of the Committee's subsequent inclusions into the Bill, resulting from our previously submitted commentary relating to the protection of copyright work for persons with disabilities. Specifically the insertion of the new definitions such as "authorized entity";

“broadcast”; and “lawfully acquired”, as well as the alignment of the Bill more closely with the Marrakesh Treaty and *inter alia*, other software and digital provisions for persons with disabilities.

In addition to our commentary herein, we respectfully reiterate our call to for urgent audience with the Portfolio Committee on Trade and Industry to motivate for an immediate conclusion towards the ratification of the **Marrakesh Treaty**, notwithstanding the inclusion of aspects of its terminology in the proposed additional definitions and clauses towards the process of adoption and enactment of the **Amended Copyright Bill (B13B-2017)**.

2. IMMEDIATE RATIFICATION OF THE MARRAKESH TREATY

South Africa, as a signatory of the Marrakesh Treaty formulated at the WIPO Conference held in Marrakesh in 2013, duly presented the National Assembly and the NCOP with the requirement for its processing and deliberation. Both houses recommended that South Africa ratify the Marrakesh Treaty.

The **United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)** was ratified by South Africa in 2007 (and entered into force on 3 May 2008) prior to our national law accommodating the principles enshrined in this first, human rights, international Treaty. The principles of the UNCRPD were implemented whilst the process of domestication was, and still is, unfolding in South Africa today.

The SANCB and Tape Aids desires that a similar human rights approach to the UNCRPD be adopted for the ratification of the Marrakesh Treaty. Motivating that the Portfolio Committee present its case in collaboration with the Department of Arts & Culture (DAC), uncoupling the Marrakesh Treaty from the enactment of the Amended Copyright Bill.

Furthermore, to motivate the Department of International Relations and Cooperation (DIRCO) or the President, to sign the ratification for the Marrakesh Treaty, and in so doing, end the book famine for hundreds of thousands of blind, visually impaired and print disabled South Africans.

The DTI and DAC collaborated in 2012 prior to the WIPO Convention in 2013. Whilst the inclusive and far reaching provisions now incorporated in the Amended Copyright Act are welcomed and applauded, they significantly transcend the simple accommodations required by the Marrakesh Treaty for printed works to be made available in accessible formats for persons with disabilities.

Furthermore, the legal status of an International Treaty is dissimilar to an Act promulgated by Parliament. A Treaty is an international law that can not be changed, unlike an Act which can be

amended. A Treaty emanates from the Constitution (Section 231) wherein Parliament becomes a main deider. Parliament has already proclaimed its decision to ratify the Marrakesh Treaty.

3. COPYRIGHT PROTECTION REQUIRED FOR NEWLY AUTHORED & TRANSFORMED ACCESSIBLE WORKS BY NON PROFIT ORGANISATIONS AND AUTHORIZED ENTITIES - COMMENTARY FOR CLAUSE 20 SECTION 19D (1) & CLAUSE 33 SECTION 39 (c) (2)

Clause 20 Section 19D (1)

“(1) Any person ~~as may be prescribed and~~ that serves persons with disabilities, including an authorized entity, may, without the authorization of the copyright owner, make an accessible format copy for the benefit of a person with a disability, supply that accessible format copy to a person with a disability by any means, including by non-commercial lending or by digital communication by wire or wireless means, and undertake any intermediate steps to achieve these objectives, if the following conditions are met ...”

The proposed deletion of the phase “... as may be prescribed and ...” may result in unintended consequences for works that have already been transformed into an accessible format (*inter alia* braille and audio recordings) that are proprietary to the entity that transformed or converted such accessible copies. This would infringe any copyright ownership rights that a Non Profit or authorized entity may enjoy from the creation of the accessible format.

Essentially, Section 19D requires an addition whereby the accessible format, so transformed, enjoys some form of copyright protection and the acknowledgement that the accessible works is the property of the creator or author with no unauthorized copying or lending being permitted without the written permission of the accessible copy rights holder.

It would place an onerous burden on the non-profit originating the accessible works, to police the use of those works by non-compliant third party entities, especially if permission was granted to ‘... Any person ...’ without the qualification of such person being ‘prescribed’.

Whilst the proposed addition to Clause 33 Section 39 (c) (2) provisions a certain level of regulation for authorization by the Minister to entities operating on a non-profit basis, no consideration has been given to the authorship rights and protection of accessible formatted works by non profits or authorized entities:

“Clause 33 Section 39 (c) (2) The Minister must make regulations providing for processes and formalities related to the authorization, or recognition, by the government of entities that provide education, instructional training, adaptive reading or information access to persons with a disability on a non-profit basis.”

4. CONCLUSION

In Conclusion, the SANCB and Tape Aids, renews its request for audience with the Portfolio Committee for Trade and Industry to present its motivations for South Africa’s immediate ratification of the Marrakesh Treaty to provide the necessary interim domestication and actualization measures towards the fulfilment of the UNCRPD (ratified in 2007). Whilst retaining the Bill’s integrity and allowing for its due diligence processes to unfold, without compromising the rights of persons with disabilities (as contained in the White Paper on the Rights of Persons with Disabilities (WPRPD)).

Furthermore, we urge the Portfolio Committee to insert the appropriate copyright protections and accommodations for accessible works created by Non Profits and Authorized Entities as the authors and creators of such works, as they relate to providing accessible formats and services to persons with disabilities.

5. SANCB & TAPE AIDS ENTITIES & COMMENTATORS REFERENCES

5.1 SOUTH AFRICAN NATIONAL COUNCIL FOR THE BLIND (SANCB):

Registration: 001-422 NPO / PBO 930 001 713

Founded in 1929 the SANCB strives to meet the needs of all blind and partially sighted people. Working with its membership of over 70 member organisations to facilitate a network of organisations throughout South Africa who collaborate towards the prevention of blindness, education and securing the full participation and inclusion of blind and partially sighted people in all aspects of a diverse society. Actively advocating for and on behalf of the varied interests of its member organisations.

COMMENTATOR: LEWIS NZIMANDE in his capacities as National Executive Director (NED) of SANCB; President of the South African Braille Authority (SABA); Executive member of the South African Disability Alliance (SADA); Board of Directors of the KwaZulu Natal Society for the Blind; Provincial Executive Committee member of Disabled People of South Africa and South African Disability Trust;

A lifetime dedication to the emancipation of people of disabilities with 20 years’ legislative and policy experience as a member of parliament. Serving on the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Youth, Children and Persons with Disability in the National Assembly; as provincial whip at the National Council of Provinces; and later Co-Chairperson of the Joint Constitutional Review Committee in Parliament. He was Secretary General of the KZN Federal Council on Disability. He has been actively involved in government transformation and policy development, contributing to the likes of the Employment Equity Act and the Constitution. He participated at NEDLAC as a representative of disability organisations to influence policy making as well as the Section 5 Sub- Committee of SA Human Rights Commission (SAHRC). Also serving as a board member at the Southern African Federation of the Disabled People South Africa, and African Decade of the Disabled.

Qualifications: Bachelor of Education Honours from University of KwaZulu Natal

5.2 TAPE AIDS FOR THE BLIND

Registration: 002-101 NPO / PBO 930 000 935

A Non-Profit Organisation established in 1958 offering National Audio Library and Accessible Audio Book Production Services for Blind and Print-Disabled Persons. The difference between the Tape Aids Avid Readers' Audio Library and other libraries is the fact that Tape Aids produces all the accessible audio books available in their library. Having thus transformed over 40,000 book titles over the past 64 years. They migrated from analogue tape cassette formats to digital formats in 2012 and their accessible audio books are available to their members in the universal mp3 standard format with unique navigational encryption features to assist place finding by blind users and providing copyright protection. Tape Aids' Education Outreach initiatives incorporated in its Campaign ***"It Takes a (Connected) Village to Educate a Nation"***, provides *Hear-to-Read* mini-libraries with accessible *Talking Books* in English and majority of South Africa's indigenous languages in rural community centres, underprivileged schools & preschools:

Tape Aids for the Blind previously acquired copyright permissions from Publishers and Copyright holders prior to the commencement of the Copyright Amendment Act, to transform their printed works into alternative spoken word recordings to produce accessible literary, artistic and audio-visual works.

COMMENTATOR: ELZA-LYNNE KRUGER in her capacities as National Executive Director (NED) of TAB; member of the SANCB National Management Committee (NMC) and National Executive Committee (NEC); elected member of the SANCB Copyright Committee and Chairperson of the SANCB Education Committee and Treasurer of the SANCB KwaZulu Natal Provincial Executive Committee (PEC); as an active member on six sub-committees of the ICT Chamber for Persons with Disabilities Working Group for Affordable & Accessible ICTs, with the following having relevance to this commentary:

- a. Accessible Broadcasting sub-committee – (Convenor / chairperson)
- b. Inclusive Education subcommittee
- c. African Digital Voices ad hoc sub-committee

She is actively involved in collaborative research and Pilot Trials in Digital Radio with Thembeke & Associates, aiding development and distance learning in rural communities through digital radio broadcasting and the establishment of digital Community Radio networks and a radio channel for the blind, using the preferred DRM (Digital Radio Mondiale) standard.

Further actively involved in collaborative Research in digital indigenous voices with CSIR Marefa Institute for Human Language Technologies (HLT) provisioning text-to-speech synthetic voices. Also, HLT technologies synchronising Tape Aids' human narrated sound recordings with printed text and words highlighted in yellow to aid dyslexic persons.

Previous employment: Managing Director of Ocean Horizon (Pty) Ltd; Managing Director of Energy X (Pty) Ltd; General Manager of African Inter-Continental Enterprises (Pty) Ltd (AICE);

Director of MWD International Limited; Director of MultiVisio (Pty) Ltd. Advisor to the Minister of Water on the National Water Advisory Committee (NWAC) for two 4-year terms (over a period of 8 years).

Qualifications: Bachelor of Arts Honours graduate of the University of KwaZulu Natal. International Who's Who Society for Professionals.