

Statement by ReCreate South Africa on the passing of the Copyright Amendment Bill 10 December 2018

ReCreate South Africa is a coalition of coalition of writers, filmmakers, photographers, educational content producers, software and video game developers, technology entrepreneurs, artists, poets, producers of accessible format materials and other South African creators.

ReCreate South Africa welcomes the passing of the Copyright Amendment Bill by the National Assembly. This historic move provides clear guidelines and balance between the rights of creators and users. ReCreate South Africa notes the lengthy consultative approach adopted by Parliament's Portfolio Committee on Trade and Industry.

We applaud the passage of a bill that serves creator interests by respecting three key rights to enable us to create the next generation of South African content for the world:

THE RIGHT TO CREATE.

The Bill creates modern exceptions to copyright, including a balanced "fair use" right, that permit digital and other uses necessary to make original work and to exercise our freedom of expression.

THE RIGHT TO OWN.

The Bill removes the Apartheid-era standard that made the commissioner of many works the default owner of our art.

THE RIGHT TO EARN.

The Bill improves the regulation of contracts and collective management organisations to ensure we are paid for our work and protected against abuse and exploitation.

The Copyright Amendment Bill is a step in the right direction in that it brings South African legislation in line with its international treaty obligations. The hybrid system improves on the fair dealing system by introducing a fair use principle. Fair use provides a list of four criteria which will provide better access to information. The exceptions for uses such as research, education, libraries, archives, format shifting and for people living with disabilities are welcomed. These amendments are long overdue and provide the necessary clarity in our copyright law.

ReCreate further welcomes the support of creators, teachers' unions, educators, authors, and student activists who look forward to the implementation of the fair use system and access to knowledge and information.

10 December 2018

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STATEMENTS OF RECREATE MEMBERS AND SUPPORTERS SUPPORTING COPYRIGHT AMENDMENT BILL

As creators, we are users of existing cultural products. Currently our work can be blocked through censorship by copyright owners for uses that would be freely permitted elsewhere. Growing the digital economy requires innovation. South Africa is at a disadvantage to other countries that have flexible copyright laws that permit software, game and other developers to use digital content for technological uses as long as they do not compete with copyright holders. For example, for a video game set in Johannesburg, it should not be a problem to feature famous landmarks like Nelson Mandela Bridge. In the United States, Canada, India and other countries such use would be considered fair; in South Africa the law is less clear. The Copyright Amendment Bill drawn up by the department of trade and industry last year included many of the creator rights we need, including the right to “fair use”. Some have lobbied against fair use for what we think are misguided reasons. Some think that such rights would harm South Africa. This, despite evidence that expanding fair use and other creator rights in other countries has promoted local industry growth, innovation, scholarship and local entertainment and publishing industries.

-Rehad Desai, Lulamile Mohapi, Ben Cashdan, Tusi Fokane, ReCreate SA calls for creator rights in copyright reform now, Mail and Guardian,
<https://mg.co.za/article/2018-05-22-recreate-sa-calls-for-creators-rights-in-copyright-reform-now>

Access to learning materials is an increasing barrier to education. Books in South Africa normally cost the same as in the wealthiest countries of the world. A new copy of a recent novel by a South African author often cost over R200. Textbooks for some courses cost over R1000. For this reason, few students rely on traditional book markets to supply their reading for class. The #FeesMustFall Movement support the fair use and educational use provisions in the Copyright Amendment Bill. These new rights will clarify that copyright law protects the rights of students and of teachers to make private research and study copies, including in course packs, to facilitate access to our constitutional right to education. We particularly support the focus of the Bill on combatting excessive pricing.

-Wandile Dlamini, Fees Must Fall activist. Statement to Parliament
<http://infojustice.org/wp-content/uploads/2018/07/Fees-Must-Fall.pdf>

The South African Democratic Teachers' Union (SADTU) is an Education Union representing 260 000 education workers and more than 13-million school going children across all 9 provinces in South Africa. We would like to express our sincere thanks to Ms. Fubbs and the Portfolio Committee for including fair use provisions and exceptions for education, research, libraries and archives and for people with disabilities in the Copyright Amendment Bill.

-Mugwena Maluleke, General Secretary, South African Democratic Teachers' Union (SADTU), Statement to Parliament,
<https://static1.squarespace.com/static/5af97dc05cfd7928de4ee753/t/5bee932e4d7a9c5f>

Outdated legislation needs to be revised urgently, especially given that the new media and the vast techno-cultures convergence interface directly with a very broad spectrum of interdisciplinary creative content, and hold a great promise for future careers for the South African youth. We strongly support the proposed fair use clause. The fair use properly balances the interests of creators in both the protection of their works from market substitution and in the right to use other works to create new content. This will create a key aspect of the enabling environment for technology growth and innovation in South Africa.

-Hanli Geysers HOD, Lulamile Mohapi, Teaching Assistant/ Researcher, Wits Digital Arts, Statement to Parliament, <http://infojustice.org/wp-content/uploads/2018/07/Wits.pdf>

South Africa, as the most unequal country in the world, should have the same pro-development “fair use” rights to use copyrighted material for education and other public interests as exist in the United States (where I received my education) and other wealthy and middle income countries (including, e.g., Malaysia, Philippines, Canada, Singapore, Korea, and others). Why should South Africa have greater monopoly protections for published works than the US and other rich countries have? Countries, I might add, with thriving publishing markets. Most importantly, if the society has greater fair use rights, it will expand authors' exposure and influence.

-Professor Patrick Bond, Professor, University of Witwatersrand, Author of numerous books published in South Africa and abroad

Media Monitoring Africa welcomes the amendments to the new, fair and practical limitations and exceptions in the Bill in line with international treaties and practices. Provisions for media, research, education, civic and many other uses are welcomed, especially in the context of a developing country and in a digital world. The limitations and exceptions for people with various disabilities are also very welcome. In this regard and to further strengthen the commitment to fair and practical limitations, we urge and recommend that the Marrakesh Treaty is ratified by South Africa as an urgent step.

-William Bird, Director, Media Monitoring Africa, Statement to Parliament at <http://infojustice.org/wp-content/uploads/2018/07/MMA.pdf>

“Fair use” is the life blood of the news media. “Fair use” clauses also align copyright use with the freedom of expression and freedom of the media clauses in the Constitution. The implementation of the principle in news and current affairs reporting supports and promotes the creative industries. SANEF warmly commends the Parliament for its work to update our legislation in line with international best practice, and a balanced approach to copyright.

- Izak Minnaar – SANEF Council member, Kate Skinner – SANEF Executive Director, South African National Editors' Forum (SANEF), Statement to Parliament,

<https://www.sanef.org.za/sanef-celebrates-the-inclusion-of-the-fair-use-principle-in-the-copyright-amendment-bill/>

Wikimedia ZA supports the adoption of Fair Use in South Africa. This will both help protect freedom of speech and increase clarity on issues of copyright in South Africa. It will also future-proof fundamental aspects of copyright in South Africa so that it can better support technological development and innovation and it will help protect freedom of speech by reducing instances of self censorship by Wikipedia editors for fear of accidentally violating copyright. It will also harden us against acts of private censorship. The clarity contributes to a code that is easier for a layperson to understand and align our copyright law with more widely understood international norms.

- Douglas Scott, President, Wikimedia ZA

The problem is that the status quo is outdated. Entrenching fair use in South African copyright law is a way to ensure the country steps firmly into the present and, ultimately, is able to move into the future. Fair use is “future-proof”. The US, for instance, has not needed to change its fair use provisions since 1976. That’s because the provisions already cater for new technologies, artificial intelligence and new developments that arise out of the fast-advancing fourth industrial revolution.

-Denise Rosemary Nicholson, Scholarly Communications Librarian, University of the Witwatersrand,

<https://theconversation.com/why-fair-use-is-so-important-for-south-african-copyright-law-107098>

The digital revolution has been a great leveller: it has brought to South African artists the ability to create new works on their own without the need for expensive equipment and without giving away their rights to gatekeepers. A smartphone is all you need to create, edit and distribute your work to the world. A copyright law that recognises the importance of the many kinds of artistry and performance that use new digital technologies to creatively build on the works of others will benefit all.

-Tusi Fokane, then Executive Director, Freedom of Expression Institute, Op-Ed: Bringing our copyright laws into the digital era, Daily Maverick,

<https://www.dailymaverick.co.za/article/2017-08-01-op-ed-bringing-our-copyright-laws-into-the-digital-era/>

One major reason to adopt an open fair use right is to authorize so-called non-expressive uses of works. In the digital age, a large and growing number of technologies rely on intermediate copies that have no independent economic significance and do not communicate the author’s original expression to the public. These new and important Internet uses include machine learning, cloud computing, text mining, plagiarism detection, automated detection of copyright infringement and constructing search engine indexes. Under current South African law and the law of many countries around the world, these Internet uses are arguably unlawful because,

although they do not communicate the copyright owner's original expression to the public in any way, they all rely on copying as an intermediate technical step.

-Professors Matt Sag and Sean Flynn, Lessons From South Africa: Protecting Non-Expressive Uses In Copyright Reform, IP Watch, <http://www.ip-watch.org/2017/07/11/lessons-south-africa-protecting-non-expressive-uses-copyright-reform/>

Disability right in the bill elegantly provides for copyright exceptions and limitations as envisaged in the Marrakesh Treaty and as required by the Constitution. It will allow blind people and visually impaired persons to access more books, more easily, and more quickly by dramatically streamlining the making of accessible format books. At the same time, it provides sufficient safeguards to protect copyright holders against abuse. We submit that the current formulation achieves a fair balance between the rights of people with disabilities and the private interests of holders of copyright.

-Marcus Low, Centre for Health Innovation and the Public Interest & Section 27

We commend the Department of Trade and Industry for its recognition that inclusion of a modernised general exception (or "user right") is an important part of updating South Africa's copyright law. The Bill as a whole would modernise many of the law's specific user rights. The provisions on temporary copies for technological processes, for educational uses, for library and archive uses, and for uses to provide access to people with all disabilities are notable examples where the Bill follows – and indeed establishes – international best practice in the field.

-Global Expert Network on Copyright User Rights, <http://infojustice.org/archives/38242>

The Association is glad that the Department has adopted some of the excellent provisions from the eIFL Model Copyright law which have been tested and approved against international copyright standards and treaties. The limitations and exceptions for people with various disabilities are also very welcome. However, until the Marrakesh Treaty is ratified by South Africa, allowing reciprocal cross-border sharing, these provisions in the Bill may not be fully effective. We recommend ratification at the first opportunity.

-Mandla Ntombela, Library and Information Association of South Africa, <http://infojustice.org/wp-content/uploads/2017/07/LIASA-Comment.pdf>

Fair Use in South Africa (Video, free to use for quotation in news coverage, retransmission, embedding on web pages, etc.)

https://youtu.be/wsrfkFkS_xM

