1 ABOUT ReCreateZA

ReCreateZA is a coalition of writers, filmmakers, producers, photographers, actors, teachers, professors, students, learners, librarians, journalists, artists, poets, software developers, technology entrepreneurs, freedom of expression activists, disability activists, game developers, producers of accessible format materials, educational content producers and many other diverse South Africans. Our coalition membership represents over half a million South Africans.

ReCreateZA was formed to advocate for both the interests of owning copyright in their own works, and in fairly using copyrighted materials in the creation of new works.

2 MISSION STATEMENT

As much as we are creators, we are users of existing cultural products. Currently our work can be blocked through censorship by those who claim to own our culture. Moreover, we often do not own the work we create. And many of us have been disadvantaged by an exploitative system which fails to pay us for our work. Growing the digital economy requires innovation. South Africa is at a disadvantage to other countries with flexible copyright laws that support creativity.

3 OBJECTIVES

3.1 The right to CREATE

Current law lacks many modern exceptions to copyright. We need these exceptions to make original work and to exercise our freedom of expression. We lack the right to:

- Adapt to the future
- Create accessible copies for people with disabilities
- Remix, transform and re-interpret
- Research, including through data mining, indexing and search
- Create educational works
- Digital archiving
- Use works in public places
- Incidental use of background content
- Parody and satire

We call on the government to enact all of these creator rights, either directly or by an open fair use or fair dealing exception. We also need a fair use test to ensure that all uses of works are fair to the creator.

3.2 The right to OWN

Current law makes the commissioner of many works the default owner of our art. This restricts the ability of many to distribute, re-mix and profit. The Act must be amended to make independent creators the default owners of copyright in all the works they create.

3.3 The right to EARN

Current law does not adequately protect us against abuses and exploitation. Collective management organisations (CMOs) have formed monopolies. They charge others for our work and claim to “represent” us. But we lack power to act as members in their governance. CMOs must have a fiduciary duty to creators, be subject to member governance, and be subject to government oversight on the reasonableness of their expenditure and payouts.

4 WHY ReCreateZA SUPPORTS THE COPYRIGHT AMENDMENT BILL

Our Coalition supports the Bill for a number of reasons. The copyright law in South Africa dates back to 1978, is extremely outdated, and does not address the digital age in which we now operate. Bill promotes three rights which are fundamental to our different stakeholders, namely the right to earn, the right to own and the right to create.

The Bill accomplishes the right to earn through provisions that promote royalty sharing, which mandates publishers and other sellers of works to share royalties derived from works, even when those works are assigned. The Bill provides for the accreditation, regulation and membership control of collecting management organisations and demands transparency in the payment of royalties to creators based on actual reports of the use of the copyright-protected work. The right to earn is further accomplished by the introduction of the resale royalty right which will allow visual artists to receive a share of the sale price when their works appreciate considerably after the first sale. Furthermore, after decades of exploitation, actors, musicians and performers will gain the right to have control over their work and the right to fair remuneration and royalties for the continued usage of their work.
The Bill promoted the right to own by removing the statutory presumption that the commissioner of the works is the default owner of the work and requires the ownership of commissioned works to be determined by mutual agreement between the contracting parties. This was a provision that was directly called for by creators and the Department of Trade and Industry took this into account and included this in the Bill. The Bill proposes a right of reversion, transferring copyright ownership back the creator 25 years after any assignment. The Bill also ensures that moral rights apply to all works.

In terms of the right to create, the Bill adopts the fair use copyright exception, expands the incidental use right to include all works and makes it clear that you may capture works in public spaces in a new creation. These provisions are valuable to creators as well as public interest users like libraries and educational institutions. Creators value fair use because the are many instances when creation relies on the use of other work, as explained below.

In addition to the above-mentioned reasons, the Bill will finally break the 'book famine' and empower those living with disabilities to give them access to works published in accessible formats, such as Braille, which is something that the current Copyright Act criminalises.

5 WHAT IS FAIR USE?

5.1 Fair use is an opening of fair dealing to include additional lawful purposes

The proposed fair use provision is an opening of South Africa’s existing fair dealing right. Both fair use and fair dealing are general exceptions that apply a common test of what is “fair” to a host of different purposes (e.g. criticism, etc.). Fair use is different mainly in including words “such as” before its list of permitted purposes. The effect is to make the list of permissible purposes of the use open to potentially any purpose. But the use still must be fair -- which means that it must not substitute for the original work.

5.2 The openness of Fair Use enables innovation

A key value of opening the purposes for fair use is to permit new technologies and uses that do not harm the original creator but that cannot be foreseen by the legislator. Flexible fair use systems have been able to accommodate technological change -- from the VCR to MP3s to the Internet.

5.3 Fair Use serves creators
Fair use helps creators because it allows them to depict real life, respond to other works, and make new creative works without being censored by the owners of copyright.

5.4 Fair Use benefits the economy

Empirical research has shown that fair use rights benefit both the creative and high technology industries without harming traditional copyright intensive industries like publishing and entertainment.

6 DECLARATION OF SUPPORT FOR THE COPYRIGHT AMENDMENT BILL

We are writers, filmmakers, producers, photographers, actors, teachers, professors, students, learners, librarians, journalists, artists, poets, software developers, technology entrepreneurs, freedom of expression activists, disability activists, game developers, producers of accessible format materials, educational content producers and many other diverse South Africans.

Amongst us, our organisations represent over half a million South Africans.

In South Africa the law has not protected our interests. We work in industries where many of us are systematically disempowered. We are working under apartheid-era legislation which favours historical and international monopolies which have control of money and power.

This power imbalance must end now.

We welcome the passing of the Copyright Amendment Bill by both the National Assembly and the National Council of the Provinces and encourage you to sign the Bill into law without delay. The Bill has undergone a lengthy consultative process at the various stages and is a good reflection of a transformative vision for a more equal and just society. The Bill also brings South African legislation in line with international treaties.

As filmmakers and photographers, we applaud the provisions which firstly make it easier for us to own our work, and secondly to critically engage with other creative works to tell our stories.

As fine artists, we welcome the introduction of a resale royalty, so that we the creators also benefit when our works become more valuable over time.

As educators, librarians and students, we commend the Bill for making it possible to access much-needed educational materials, and to produce decolonised learning
materials in all South African languages. This will particularly benefit disadvantaged and excluded learners. Libraries will also finally be able to digitise and preserve our cultural heritage.

As disabled rights activists, this Bill will finally empower us and give us access to opportunities denied to us by the lack of works in accessible formats, such as Braille.

As actors, musicians and performers, after decades of exploitation, we look forward to having control over our work, the choice of how it is used, and the right to fair remuneration and royalties for the continued usage of our work.

As digital entrepreneurs, we welcome the modernisation of Fair Use in the Bill which allows us to compete on a global stage in fields ranging from artificial intelligence to game development.

As journalists and activists we believe the Bill makes a key contribution to the protection of free expression and access to information, which are essential components of a democratic and inclusive society.

As writers, authors and composers, we praise the Bill for redressing a historical imbalance by ensuring that assigned copyrights revert to the author and by introducing royalties for additional uses of our works.

And as creators across the board, we believe the regulation of collective management organisations is extremely urgent to prevent our income being mismanaged and to ensure that CMOs are accountable to the artists and creators they exist to serve.

When it comes to Fair Use of copyrighted materials we applaud the approach taken in the Bill, which increases access without substituting in the market of the original creator.

We look forward to playing our part in a dynamic, inclusive and decolonised creative economy with the support of the Copyright Amendment Bill and the Performers Protection Amendment Bill.

#SignTheBills #EndExploitation #DecoloniseTheCreativeEconomy
#SupportCreatorsNotProfiteers #EducationForAll

SUPPORTED BY:

Organisations:

South African Democratic Teachers Union
National Professional Teachers' Organisation of South Africa
SAOU Teachers Union
South African Guild of Actors
WikiMedia ZA
Right2Know
ReCreateSA
Freedom of Expression Institute
SA Right to Read Coalition:
  ● Blind SA
  ● Daisy SA
  ● SA Library for the Blind
  ● SA Braille Authority
  ● SA National Council for the Blind
  ● SA Disability Alliance
  ● Tape Aids for the Blind
Media Monitoring Africa
Down Syndrome South Africa
UCT IP Unit
Section 27
African Union of Blind Marrakesh Treaty Committee
Library and Information Association of SA
The Safety Lab
LifeCo UnLtd
People Against Racism
Personal Managers Association
AfroLabs
Shifty Records
Association for Progressive Communications
Creative Commons South Africa

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7 MEDIA

W: www.re-createza.org
F: ReCreateZA
T: @SaRecreate

Proposed Legislation Will Benefit Musicians Significantly – Deputy Minister Gina (dti, 18 August 2019)

Decolonising Copyright for development: Regulatory pathways for a reconstituted economy in South Africa (Prof Ruth Okediji, 08 August 2019)
https://www.youtube.com/watch?v=ULHQqxKYaj8&feature=youtu.be&t=2020

The story behind the South African Actors' Bill (Jack Devnarain, StartUp Africa, 07 July 2019)

South African creatives grapple over copyright (Chitopher Vourlias, Variety, 20 July 2019)

Copyright Bill gives SA Creators their due (Nontando Tusi, Business Day, 15 July 2019)
8 CONTACT DETAILS

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