

His Excellency, President Cyril Ramaphosa
Republic of South Africa
Union Buildings
Pretoria, South Africa

25 November 2019

Re: Copyright Amendment Bill [B13B - 2017]

Honourable President Ramaphosa,

I am writing with respect to the Copyright Amendment Bill awaiting the Presidential signature.

EIFL (Electronic Information for Libraries) is an international NGO that works with libraries to enable access to knowledge in over 50 developing and transition economy countries in Africa, Asia, Europe and Latin America. In South Africa, EIFL has engaged with academic libraries to support teaching, learning and research, and with public libraries to develop ICT skills and create employment opportunities in disadvantaged communities¹.

The Copyright Amendment Bill brings the 1978 Copyright Act, adopted in a pre-internet era, into the digital age. The Bill introduces much needed reforms to help maximize access to knowledge for education and learning, support modern science, research and innovation, and create new opportunities for people in South Africa to engage in the digital economy.

EIFL is extremely concerned that a group representing certain parts of the US film, music and publishing industries is seeking to scupper the Bill. The objections are especially audacious since many provisions in the Bill are drawn from provisions with similar effect in other copyright laws, including US law, and from international copyright treaties.

One item that features prominently in the objections is the introduction of a US-style ‘fair use’ provision. Fair use a core principle in US copyright law, codified in the Copyright Act of 1976. It has been adopted in many other countries around the world². In addition, Australia is currently considering adopting fair use as part of copyright modernization plans³, while Singapore is proposing to strengthen its existing fair use exception, introduced in 2004, “to create an even better environment conducive to the development of creative works, and to facilitate greater investment, research and development in the copyright industries in Singapore”⁴.

¹ <http://www.eifl.net/country/south-africa>

² Liberia (1997), Israel (2007) and Korea (2011), among others. Fair Use/Fair Dealing Handbook, <http://infojustice.org/archives/29136>

³ <https://www.communications.gov.au/have-your-say/copyright-modernisation-consultation>

⁴ <https://app.mlaw.gov.sg/news/press-releases/singapore-copyright-review-report-2019> p.25

Thus South Africa is perfectly entitled to introduce fair use that will underpin key programmes such as the National Development Plan 2030, support the ambition of the Fourth Industrial Revolution in South Africa, and provide South Africans with a strong competitive edge in the global digital economy.

Further, the Bill has a strong public interest goal to ensure access to information for research, education, libraries and archives and persons with disabilities that will help boost South Africa's development priorities. Public interest considerations, expressed through limitations and exceptions, are a well established part of the international copyright system.

The Berne Convention (1886) has a mandatory exception for quotation, and exceptions for teaching, news reporting, and political speeches. The WTO TRIPS Agreement (1995) carried forward public interest principles in Article 7:

“IP rights should contribute to the mutual advantage of producers and users in a manner conducive to social and economic welfare, and to a balance of rights and obligations”.

The Agreed Statement to Article 10 in the WIPO Copyright Treaty (1996) permits members

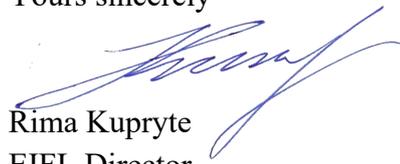
“to extend existing limitations and exceptions for the digital environment, and to devise new ones that are appropriate for the digital network age”.

The Marrakesh Treaty (2013) focuses specifically on exceptions for persons with print disabilities. The exceptions are mandatory and have cross-border effect.

Through a robust set of carefully crafted exceptions for non-commercial uses, South Africa is legitimately availing of these flexibilities in the copyright system. The exceptions will support national development programmes, such as those training young people in data science and artificial intelligence, help to reduce inequalities in education and society, and contribute towards attainment of the Sustainable Development Goals.

In summary, the Copyright Amendment Bill reflects developments around the world in national copyright reform. It is an excellent exemplar for other governments seeking to modernize their copyright laws, in particular other developing countries where EIFL works. Accordingly, I urge you to assent to the Bill without delay.

Yours sincerely



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cc:

Mr. Ebrahim Patel, Minister of Trade and Industry, DTI

Dr Shandokane Evelyn Masotja, DTI

Mr. Nathi Mthethwa, Minister of Sports, Arts and Culture