

Ms Joanmariae Louise Fubbs
Chair
Portfolio Committee on Trade and Industry
Parliament of the Republic of South Africa

Dear Ms Fubbs

The Australian Digital Alliance is writing to follow up its previous comments made in 2015 on the first draft of the SA Copyright Amendment Bill.

We commend the South African Government on the 2017 Bill, and particularly the provisions for libraries, archives, galleries, education and academic activities and for people with disabilities. However, we note that there are still places where the provisions of the Bill could better equip South African copyright law for the digital age.

In particular:

- the proposed fair use provisions are limited in their function, in that they extend only to a closed list of uses and hence do will not provide the most important benefit of other countries' fair use laws – the ability to adapt to and take account of unforeseen future uses. We also note that the closed list provided does not include the important category of transformative uses.
- the proposed provision for quotation is very limiting for authors, researchers, and anyone else who needs to use quotes from third party works for creativity and innovation purposes.
- the provisions for orphan works are onerous and impractical for libraries and archives, educators and other information-users who need the ability to access and use information in a timely manner. The lengthy and costly process prescribed - including newspaper notices, an application to a Commission/Tribunal for clearance, and payment of fees – is excessive for works which almost by definition have no commercial value, and is likely to result in the provision being used very little, if at all. By the time that authorisation is approved, the need to use the material will have long passed, and the users will have lost the benefit of using that material at all.

By addressing the above elements alongside the other already excellent provisions of the Bill, South Africa will be ensuring that it is a global leader in the provision of sensible and practical copyright laws that encourage innovation, creative growth and economic prosperity.

If you have any further questions regarding the above comments, do not hesitate to contact our Executive Director, Jessica Coates, at jessica@digital.org.au.

Yours sincerely



Derek Whitehead
Chair
Australian Digital Alliance