

To the attention of Mr Hlupheka Mtileni
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Select Committee on Trade and International Relations (NCoP)

The Hague, 20 February 2019

Comments to the South African Copyright Amendment Bill

Following the call for comments by the NCoP

The International Federation of Library Associations and Institutions (IFLA) represents the interests of library and information services worldwide, with over 1400 members in over 140 countries around the world. It is also leading international library advocacy on copyright exceptions and limitations at the Standing Committee on Copyright & Related Rights (SCCR) of the World Intellectual Property Organisation (WIPO), and advocates for copyright policies suited for libraries and their users at the regional and national level.

Good copyright laws are key to the fulfilment of libraries' public interest mission. Outdated or inadequate copyright regimes hamper democratic access to information and preservation of our cultural heritage.

As advocates for laws that respond to libraries' and their users' needs in a digital environment, we strongly welcomed South Africa's copyright reform. The proposal has many positive provisions that would be highly beneficial for access to information and culture in South Africa, notably facilitating the public interest mission that libraries conduct.

IFLA has kept a close eye on developments on the Bill within the Portfolio Committee and the National Assembly, working together with our members in South Africa. We have sent several letters to share our expertise and views on the matter, [publicly celebrated](#) its adoption within the committee and written to South African ministers and parliamentarians. IFLA's Secretary General, Gerald Leitner, urged them to "take the final steps necessary to approve a copyright reform that will be good for libraries and good for their users".

We are aware that discussions have been tense and some have criticised the progress made, but many [arguments are ungrounded and positively misleading](#). From experience in copyright reforms elsewhere, we can say that fair use will not destroy the existing industries (and will make other industries flourish), that exceptions and limitations to copyright for libraries will not destroy the publishing industry (but will help libraries provide a public interest service which will contribute to the health of the overall book sector), and that the current reform is not incompatible with international treaties. In short, fair use has to be fair, and decisions against 'unfair' uses in courts around the world have shown this concept to be fully operational.

Furthermore, retaining outdated laws will not favour the domestic publishing industry over imports from major multinationals, given that copyright law does not allow for this of differentiated treatment.

There are several provisions we wish to underline, which will facilitate the work of libraries and other cultural heritage institutions significantly:

- The inclusion of a **fair use** provision. The flexibility of such a provision is key to ensure that important library activities that do not harm the legitimate interests of rightsholders can take place even in a time of technological change. It will be a positive step forwards in favour of education, literacy, research and access to knowledge in general

- The general exceptions for libraries, archives, museums and galleries, for non-commercial purposes, including lending, preservation and web archiving, inter-library loan and limitation of liability.
- Provisions to ratify the Marrakesh Treaty, which will help towards ending the book famine in South Africa.
- The national open access policy, which will help ensure that South African research will have a greater impact and reach, as well as opening a door to new structures of scholarly communication, breaking away from the current model dominated by major UK and American entities.
- Provisions ensuring that the exceptions and limitations to copyright, as decided by elected legislators, cannot simply be overridden by contract terms
- A promising set of proposals for a licensing system for orphan works
- Specific exceptions such as quotation, use of illustrations in publications and other, and translation of works for non-commercial purposes.
- The temporary reproduction and adaptation exception, for transient or incidental copies or adaptations of a work that are an “integral and essential part of a technical process”.
- The reproduction exceptions for non-commercial educational and academic activities, including making copies of works for the purposes of educational and academic activities, reproducing a whole textbook if the work is orphaned, out of commerce or out of print, incorporating portions of works in an assignment, portfolio, thesis or a dissertation for submission, personal use, library deposit or institutional repository (by a person receiving instruction), among others.

We are currently advocating for many of these provisions at the World Intellectual Property Organisation because they are fundamental for a proper functioning of cultural heritage institutions.

Seeing that such a positive Bill is so close to adoption, we would regret to not see the last steps completed as soon as possible. The library sector has advocated for such necessary changes for over 20 years, and no delay is justified at that point. Looking at this copyright reform from an international perspective, South Africa will play a leading role that others in the region will follow.