



8 JULY 2021

From: Denise R. Nicholson t/a Scholarly Horizons – <https://www.scholarlyhorizons.com>

Email: [Denise.Nicholson@scholarlyhorizons.com](mailto:Denise.Nicholson@scholarlyhorizons.com)

To: Mr. D Nkosi, Chairperson: Portfolio Committee on Trade and Industry,  
Parliament, Cape Town

Dear Honourable Member Mr. Nkosi,

**Re: Submission on Sections 12B, C and D, and Section 19 B and C of the Copyright Amendment Bill**

On 7 July 2021, I submitted my comments on Section 12 A (Fair Use). This is my second submission addressing the remaining sections under review. For easy reference, see my [bio in Annexure B](#) of this submission.

## **MY COMMENTS:**

### **A. CURRENT COPYRIGHT LEGISLATION**

We are 24 years into our democracy and still have an apartheid-era piece of legislation, the Copyright Act No. 98 of 1978, which was passed 5 years before the birth of the Internet. Due to its age, it only applies to reprographic reproduction of printed works, i.e. photocopying and facsimiles. The Regulations (Section 13) were adapted from the US Classroom Guidelines and have always been restrictive but nebulous too.

The Copyright law is totally outdated, does not address the digital environment or the needs of the 21<sup>st</sup> century and 4IR (even the 3IR), so copyright clearances are necessary for anything digital. It therefore hinders the progress of progress open content programmes, including open data, open access, open science, open textbooks, and other programmes, e.g. the SA/EU partnership in Open Science (Dept. of Science and Innovation) and Open Educational Resources (Dept. of Higher Education and Training), SKA International Project, and many more research and innovative projects.

It has limited fair dealing provisions mainly for personal use in the printed environment, and few exceptions for research and education, libraries and archives, in the Regulations (Section 13), not the main Act itself.

The Act does not have any exceptions for museums and galleries (historical and cultural heritage entities), nor legal deposit to preserve our documentary memory and cultural heritage.

It has no exceptions for people with disabilities, who also require exceptions for access to knowledge, education, research, employment, leisure, and other purposes. The exceptions for libraries and other information services will empower librarians to assist people with disabilities, and also enable people with disabilities to benefit from appropriate library and archival services to meet their special needs. Currently the Blind SA, with Section 27, are engaged in a case in the Gauteng High Court against Parliament, the President and the Dept. of Trade and Industry, on the grounds that the current copyright law is unconstitutional and discriminatory to people with disabilities. The court hearing is on 21 September 2021. The current law is also in conflict with international Conventions on human rights and disabilities.

***Amendment of the current copyright law is long overdue. Enactment of the Bill is now urgent.***

## **B. NEGATIVE IMPLICATIONS DUE TO ONGOING DELAY OF BILL**

The COVID-19 pandemic highlighted the long-known omissions, inadequacies, and restrictions in the current copyright law, that continue to negatively affect access to information and educational resources, and hamper knowledge-sharing and the provision of relevant teaching and research materials, particularly in the digital space. The lack of basic amenities, facilities and infrastructure in rural educational facilities is heart-breaking and appalling. Yet, they are burdened with the additional

problems of lack of access to information and teaching and learning materials, largely because of our 43-year-old restrictive copyright law. Our educational system has deteriorated over the years because of this.

In the more advantaged educational sector, restrictive copyright laws, prohibitive e-licences and high pricing of e-books created many challenges for educators, learners, libraries and archives and other information services during the lockdown. Since we are now back in lockdown level 4, and no doubt similar protocols will be here for some time, these problems will continue to cause problems for the research, education and library sectors, but also for all citizens in South Africa who use the services of these sectors. That is, until we have a new Amended Copyright law.

Without the exceptions in the Bill, the statutory mandates of all libraries (including legal deposit libraries), archives, museums and galleries, are rendered virtually ineffective in the digital space. The collection, preservation and digital curation of our cultural heritage and historical record are at serious risk. The statutory functions of the National Council for Library and Information Services (NCLIS) and the Legal Deposit Committee, both of which are advisory bodies for the Minister of Sport, Arts and Culture, will continue to be hampered. In addition, until the Bill is enacted, ratification of the Marrakesh Treaty for Visually Impaired people will be delayed, subjecting people with disabilities to an ongoing 'book famine' and daily discrimination.

The National Digitisation Policy cannot be finalised until the Copyright Amendment Bill is passed. Ironically, the new Data and Cloud Policy has recently been circulated for comment, yet our copyright law does not even address the digital environment.

Phase 2 amendments of the Third Cultural Amendments Act 2008 under the portfolio of the Department of Sport, Arts and Culture will be further delayed. These include the National Library of South Africa Act, the Legal Deposit Act and South African National Library for the Blind Act, and several other pieces of legislation related to cultural matters. Phase 1 could only attend to technical updates. Phase 2 cannot proceed until the Bill has been enacted.

**Publication For Comment: Draft Cultural Laws Third Amendment Bill**  
[https://www.gov.za/sites/default/files/gcis\\_document/201409/gg31082nn652pg3-61.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/gg31082nn652pg3-61.pdf)

## C. COPYRIGHT AMENDMENT BILL 2017

### 1. SECTION 12B – Quotation – supported.

These exceptions are relevant to scholarly communication, publishing, research and teaching and learning, and innovation and creativity, whether academic or otherwise. Suggestions that the clause allowing quotation will encourage plagiarism are incorrect. Acknowledgement is required whether it is copyrighted, out of copyright, never copyrighted, open access or freely available. Plagiarism is generally dealt with through university and other institutional policies and disciplinary procedures. This section is similar to the exception for quotation in the current copyright law. Quotation is essential for written expression for academics, researchers, students, schoolchildren, authors, creators, musicians, journalists – in fact, anyone who needs to repeat words spoken or written by someone else needs.

Quotations are a normal practice in writing and even verbal communications. Quotation is in essence an example of fair use, enabling parties to reproduce or reiterate a third party's words without affecting the exploitation of the work where it is taken from.

See: **Does the South African Copyright Amendment Bill promote Plagiarism?**  
<http://infojustice.org/archives/41511>

### 2. SECTION 12C – supported.

Transient or incidental copies or adaptations of a work, including reformatting, where such copies or adaptations are an integral and essential part of a technical process cannot be excluded from digital processes.

### 3. SECTION 12D – Libraries, archives, museums & galleries. – supported.

The mission of libraries is to collect, organize, preserve and make available the world's cultural and scientific heritage for current and future generations. Libraries operate for the public benefit supporting education and training, access to knowledge, information and culture. Libraries are independent, neutral spaces committed to providing services on the basis of equality and access for all. Libraries exist in almost every country in the world. Different types of libraries serve different user groups. The National Library usually collects the national publishing output of the country and often has sophisticated preservation and conservation programmes. Many countries also

have a network of public libraries offering community-based services to the general public including lending books, programmes for literacy and lifelong learning, as well as information on local services. Public libraries range in size from large central libraries to small village centres and mobile libraries serving rural communities. They may also provide services directed to specific groups, such as children, linguistic minorities, people with disabilities, people in hospitals or prisons. Academic and research libraries play a central role in supporting teaching, learning and research in universities, schools and other places of learning. Special and workplace libraries provide vital information services to people in support of their work, such as government policy makers, doctors and clinicians, as well as the private and corporate sectors, including accountancy and law firms, pharmaceutical companies and media organizations.<sup>1</sup>

Libraries and archives, museums and galleries urgently require appropriate exceptions to enable them to carry out their mandatory functions, particularly in the digital environment.

This entire section was informed by many progressive copyright laws around the world, and the Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives (Africa Group – SA plays a leading role in the Africa Group) – see: [https://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_22/sccr\\_22\\_12.pdf](https://www.wipo.int/edocs/mdocs/copyright/en/sccr_22/sccr_22_12.pdf).

This section is conditional in that use of copyright works is subject to the provisions that the copying *does not exceed the extent justified by the purpose*.

- **S. 12D (1): Coursepacks for educational purposes: - supported**

The exception for printed and electronic coursepacks, study packs, resource list will be extremely helpful for teaching and learning, particularly in the pandemic, but also for less privileged educational institutions, including schools, where printed material is required because internet capacity is limited, slow, or non-existent, or data costs are too high. Also, course-packs are necessary where textbooks are unaffordable and access to other reading material is restrictive or inaccessible. They would also be useful for academics to collate and share with

---

<sup>1</sup> EIFL Draft Law on Copyright – pg. 43 -

[https://www.eifl.net/system/files/resources/201607/eifl\\_draft\\_law\\_2016\\_online.pdf](https://www.eifl.net/system/files/resources/201607/eifl_draft_law_2016_online.pdf)

less privileged academics in the rural areas, who often depend on older journal articles because they do not have internet connectivity or funds to subscribe to expensive journals. Some years ago some medical academics wanted to collate up-to-date articles in a monthly course-pack for colleagues in the rural areas who did not have access to the internet or such works. They would have had to licence each article and pay for it. They did not have funds so had to abandon the idea. Use of outdated journals could be dangerous for patients in the rural area. This altruistic service would have been most helpful to them but copyright was a barrier.

In the more advanced educational institutions, this exception will eventually become non-existent as there has been very noticeable increases in their use of digital resources, ebooks, open access, open institutional repositories, and open educational resources. As a result, the use of printed course-packs and the number of photocopies in such institutions have reduced considerably. Some University Schools are prescribing one textbook instead of using course-packs, and then provide links to digital resources. (This has been proved statistically). It must be noted that many publishers allow printed and electronic course-packs in their e-licences. (I wrote to all the subscribed e-publishers while I was still working at a tertiary institution a few years ago and more than half of them (including some of the big international publishers) allowed print and/or electronic course-packs. Many also allowed interlibrary loans, accessible formats for disabled users, use of material on institutional repositories, etc. This practice of inclusion of such rights in e-licences will no doubt increase as new e-licences are negotiated between the South African National Library and Information Consortium (SANLIC) and publishers in the future. Photocopied course-packs will eventually disappear. Transactional licences will still be used for various reasons.

In addition, the cost of course-packs in South African public universities is astronomical. In 2018, 15 tertiary libraries responded to my request for estimated expenditure in 2018 relating to e-resources, book budgets and copyright fees. Due to non-disclosure agreements only 15 of the 26 public universities were able to respond.

It emerged that 15 of the country's 26 higher education libraries would pay just over R1 billion (USD\$69 million) in 2018 towards electronic and printed

resources. This amount increases by 5% per year on average with the exchange rate of these international resources adding to the expense. In addition, 14 of the 15 mentioned institutions would pay about R31 million (USD\$1.8 million) to the Dramatic, Artistic and Literary Rights Organisation (DALRO) for copyright licences on prescribed works and study materials that year alone.

See article: **The cost of accessing academic research is way too high. This must change** - <https://theconversation.com/the-cost-of-accessing-academic-research-is-way-too-high-this-must-change-105583>

Since an estimated 80% of the collections in academic libraries are purchased from international publishers, the majority of money flows out of the country to publishers in developed countries. The [Farlam Copyright Review Report 2011](#) (point 9.2.5) confirmed that in the 2010 calendar year, the total amount collecting society DALRO collected from licensing was R28 582 389 and the total amount distributed R21 601 415 (of which R 9 477 661 was distributed to local rights holders). This proves that the bulk of revenues collected by DALRO from educational institutions are paid to international publishers, not South African. (*Question: Is the blanket licensing scheme helping SA publishers and authors? Or, is it a convenient income stream for foreign publishers?*)

Moreover, a great deal of research produced locally is published internationally and forms part of the cohort of knowledge that is given to international publishers for free. These publishers legally become the copyright holders through publishing agreements and sell back this knowledge in highly priced journals and electronic databases to libraries and institutions in South Africa.

There is also a great deal of duplication and double dipping so higher institutions of learning are paying more than they should for copyright fees. Some examples:

- the DALRO blanket licence fees are calculated on the number of FTEs at an institution. This assumes that every student will exceed the fair use exceptions in the current law and should pay copyright fees. Most postgraduate students copy under fair dealing and do not receive course-packs, yet they are included and levied an annual fee for copyright through the Blanket Licence. With the cost of printing and paper, and closure of libraries in the pandemic, students no longer have the privilege of copying excess amounts.

- Fewer copies are being made (as mentioned above) yet the cost of the DALRO licences increases every year, so institutions are in fact paying more each year for fewer reproductions.
- Institutions pay exorbitant subscription fees annually for e-databases and other electronic resources, as well as high prices for printed material. If lecturers want to make an article from a subscribed (paid-for) electronic database, and make it available on a password-protected e-learning platform, they have to pay copyright licences to DALRO so they can scan the full text article, images, etc. onto the e-learning platform. This is duplication or double dipping as the publishers gets paid over and over for the same material every year.
- Some institutions that have rejected the Blanket Licence and have returned to transactional licensing have saved millions in copyright fees.

The huge amounts that the public universities will save on copyright fees for lawful course-packs provided in this section will now be able to be redistributed for the purchase or new printed and electronic resources (specially to support local publishers, including local university presses), upgrade infrastructure and gain access to new technologies to improve library services.

The fact that knowledge resources expenditure for research and teaching purposes in the South African higher education sector runs into the billions should be an issue of major concern. It is a known fact that textbooks and other reading material are generally more expensive than in other countries, even developed countries. There is little collated information available, particularly because institutions are bound by non-disclosure agreements with publishers. This is a practice that needs to change in the future.

This exception for course-packs (print and electronic) is not unique to South African copyright law. This case in India rules in favour of course-packs for educational purposes under its fair dealing exception. It is important and applicable to this Section 12B of the Bill –

**See: Course Packs For Education Ruled Legal in India - <https://Www.Eifl.Net/Blogs/Course-Packs-Education-Ruled-Legal-India>**

This exception is also consistent with recent fair use decisions in the United States. In a lawsuit brought by publishers against Georgia State University, the



U.S. Court of Appeals for the Eleventh Circuit rejected the publishers' effort to find GSU's electronic reserve system was infringing as a matter of law. Importantly, the court distinguished earlier cases publishers had brought against commercial photocopy shops that assembled course-packs from this case, where the university maintained the copies on its servers for non-commercial educational purposes. Additionally, the fair use analysis of the U.S. Court of Appeals for the Second Circuit in *Authors Guild v. HathiTrust* was influenced by the security measures employed by HathiTrust, a consortium of research libraries that stored the full text of millions of digitized books. The South African provision requires similar security measures.

- **Sec. 12D 4 and 5: Copying of whole work – supported.**

The circumstances in which educational institutions are permitted to make copies of whole or major parts of copyright works are limited to specific legitimate purposes, and not for commercial purposes, i.e. where the textbook is out of print; where the owner of the right cannot be found; or where authorised copies of the same edition of the textbook are not for sale in the Republic or cannot be obtained at a price reasonably related to that normally charged in the Republic for comparable works. This is fair and reasonable.

- **Sec 12D 6: Inclusion in assignments, ETDs, etc. – supported.**

Any person receiving instruction may incorporate portions of works in printed or electronic form in an assignment, portfolio, thesis or a dissertation for submission, personal use, library deposit or posting on an institutional repository. This applies in the print environment under fair dealing. It will now extend to the digital space which is logical and legitimate. Research cannot be done without such an exception, otherwise researchers would spend most of their time trying to clear copyright for everything they want to quote or include in their research reports. Acknowledgement would be required.

- **Sec 12D 7a-c: Open Access Repositories. – supported.**

**This sub-section was adapted from the Sec. 38(4) of the German Copyright law - [https://www.gesetze-im-internet.de/englisch\\_urhg/englisch\\_urhg.html](https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html).**

The author of a scientific or other contribution, which is the result of a research activity that received at least 50 per cent of its funding from the state and which has appeared in a collection, has the right, despite granting the publisher or

editor an exclusive right of use, to make the final manuscript version available to the public under an open licence or by means of an open access institutional repository. This provision should be fully supported as it applies to public funding, so the works should be made openly accessible to the public.

If one looks at the [Sherpa Romeo website](#), there are thousands of publishers that allow this to be done already, and nearly 1000 publishers who allow the final PDF published version to be deposited, so this is not an unusual provision. In fact, it gives authors more exposure globally and, in the process, their citations should increase. Institutional repositories are open access archives managed by tertiary institutions' libraries around the world.

The NRF Statement on Open Access requires grantees to place a copy of their research and publications on an Open Access institutional repository, so this section will be helpful to authors and librarians.

**Statement on Open Access to Research Publications from the National Research Foundation (NRF)-Funded Research**  
<https://www.nrf.ac.za/media-room/news/statement-open-access-research-publications-national-research-foundation-nrf-funded>

- **Sec S12D 7d: Third parties assisting authors. - supported.**

It is international practice that librarians assist scholarly authors to deposit their publications on open access institutional repositories, or train scholarly authors to do it themselves. Librarians also managed the repositories, catalogue and provide meta data for accessibility purposes. They also engage in preservation and data management for researchers and postgraduate students too. This section will empower authors and librarians. Currently, they have been hampered by restrictive copyright policies of rightsowners.

- **Sec 12D 7e: Unenforceable agreements - supported.**

This sub-section should be welcomed as authors often get an unfair deal by signing restrictive contracts with publishers (including open access publishers and self-publishers). What this section does is ensure that publisher and digital service provider contracts do not override lawful copyright exceptions. It has been the practice for years where contract law has overridden lawful copyright

exceptions, removing the benefits of the exceptions. To explain, are two simple examples to explain this:-

- If a vehicle is lawfully allowed to proceed if the robot is green, but the contract says it may not, then that contract becomes unenforceable as it cannot override something that is lawful.
- An open access publisher claims copyright in the contract, yet it is open access so the author should retain copyright. Both these contracts would be unenforceable.

This sub-section remedies this unfair practice and empowers authors in the process. It is not intended to undermine contract law, but to balance the playing fields between publishers and authors. It was adopted from the EIFL Model Copyright Law and should be supported. It is also a provision in the Singapore copyright law. This section does not prohibit or otherwise interfere with open licences or voluntary dedications of a work to the public domain.

- **Sec 12D 8: Acknowledgment:** Acknowledgement is required where the source is available, and this applies to copyrighted, open access, out of copyright, not copyrighted and free works regardless. This does not encourage or lend itself to plagiarism.

#### **D. SECTION 19 B – supported.**

This section addresses copyright software and its use and reproduction to enable interoperability, observation, study and testing for re-engineering and related legitimate purposes. It would also allow a library considering the purchase of an e-database to browse and examine its functionality, accessibility, etc. This section was adopted from Section 15 of the EIFL Model Copyright Law

#### **E. SECTION 19 C - Libraries, archives, museums and galleries – supported.**

Formal commitments to libraries and other information services were made by the Department of Arts and Culture in 2015 and 2018. In August 2015, Minister Nathi Mthethwa and 12 other African Ministers signed the Cape Town Declaration<sup>2</sup>, which, amongst other important issues related to library and information services, includes the following important sentences:

---

<sup>2</sup> <https://www.ifla.org/node/9767>

- Encourage the implementation of fair and balanced copyright laws to facilitate access to information for all;
- Encourage the use of e-books and virtual libraries more effectively to facilitate cultural and scientific exchange and encourage a culture of reading in the continent;
- Promote library policies on access to information as part of a universal human rights approach as well as rights of people to knowledge.

Again a follow-up meeting in July 2018, Minister Nathi Mthethwa, with 34 other African Ministers of Culture, signed the Durban Communiqué<sup>3</sup>, confirming their full commitment to the support, resources, and development of libraries to enable them to drive the African Union Agenda 2063 and United Nations 2030 Sustainable Development Goals. The Communiqué recognises the crucial role that libraries play in the socio-economic development of countries in Africa. It also confirms the commitment to ensure and protect intellectual property rights including copyright and neighbouring rights laws and balanced implementation.

Library and information services (LIS) and the citizens they serve all need fair and balanced copyright laws to enable them to carry out the above commitments and their statutory mandates in the interests of all South Africans and all other users of their print and digital resources, including historical documentary records and cultural heritage.

These exceptions are modelled on provisions in the copyright laws of developed countries with strong creative sectors, including Australia, Canada, Israel, Singapore, the United Kingdom, and the United States. These countries are 3-step test compliant. The Copyright Amendment Bill seeks to ensure that libraries, archives and other information services and cultural heritage entities have similar exceptions and limitations to their counterparts in those countries.

These exceptions in Section 19 C were adopted or adapted from WIPO Studies and Draft WIPO Treaty Proposals, as well as the EIFL Model Law, as below:

---

<sup>3</sup> [https://cdn.ymaws.com/www.liasa.org.za/resource/resmgr/documents\\_/2018\\_ministerial\\_roundtable.pdf](https://cdn.ymaws.com/www.liasa.org.za/resource/resmgr/documents_/2018_ministerial_roundtable.pdf)

WIPO Studies on limitations and exceptions for libraries and archives – see:  
[https://www.wipo.int/copyright/en/limitations/libraries\\_and\\_archives.html](https://www.wipo.int/copyright/en/limitations/libraries_and_archives.html)

Treaty Proposals of IFLA and its Alliance Partners (supported by the Africa Group at WIPO) – see:  
[https://www.ifla.org/files/assets/hq/topics/exceptions-limitations/tlib\\_v4\\_4.pdf](https://www.ifla.org/files/assets/hq/topics/exceptions-limitations/tlib_v4_4.pdf)

Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives (Africa Group – SA plays a leading role in the Africa Group)  
[https://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_22/sccr\\_22\\_12.pdf](https://www.wipo.int/edocs/mdocs/copyright/en/sccr_22/sccr_22_12.pdf)

Sections 8 to 16 of EIFL Model Copyright Law:  
[https://www.eifl.net/system/files/resources/201607/eifl\\_draft\\_law\\_2016\\_online.pdf](https://www.eifl.net/system/files/resources/201607/eifl_draft_law_2016_online.pdf)

- 8      **Reproduction for private purposes and research**
- 9      **Temporary reproduction**
- 10     **Quotation**
- 11     **Reproduction for educational activities**
- 11A    **Inter-library document supply**
- 11B    **Translations**
- 11C    **Communication to the public for educational and research purposes**
- 12     **Libraries and archives**
- 13     **Reproduction, broadcasting and communication to the public for informatory purposes**
- 14     **Caricature, parody and pastiche**
- 15     **Reproduction and adaptation of computer programs**
- 16     **Display of works**

**See: Annexure A - My presentation notes at DTI Multi-stakeholder conference in August 2015**

Section 19C introduces brand new for museums and galleries, which are important custodians of our historical memory and cultural heritage. It also expands on the current limited exceptions for libraries and archives in Section 13 (Regulations) and enables their statutorily mandated functions to be performed in the digital space.

The provisions for format shifting and conversion of works are welcomed as they are essential for libraries and archives to ensure access to information and preservation for perpetuity. Lack of such provisions in our current copyright law has created serious problems for libraries and archives, due to obsolete

technologies. To remedy this situation, this provision should be retrospective, otherwise large collections, many priceless and/or cultural heritage works will be inaccessible and impossible to preserve for future generations. Legal deposit libraries will not be able to carry out their statutory mandates in preserving our cultural heritage. Researchers, educators, authors, and other information-users will not be able to use these works to create new knowledge if they are not converted to accessible technologies.

The provisions for preservation and digital curation are extremely urgent, especially in the COVID-19 pandemic, when libraries, archives, and related information services are closed, and access is only possible via electronic services and resources. Exceptions for the reproduction of or replacement of lost or damaged works, interlibrary digital services, institutional repositories, digitisation, back-copies, exhibitions, and other exceptions in this section are essential for accessibility and preservation of collections and cultural heritage.

The devastating fire and loss of irreplaceable collections at the Jagger Reading Room at the University of Cape Town in April 2021 is a stark reminder of the lack of provisions for libraries and other custodians of our historical memory and cultural heritage.

**Treasure Trove lost in South African University fire - See:**

<https://clubofmozambique.com/news/treasure-trove-lost-in-south-africa-university-fire-190081/>

The Bill provides internationally accepted, useful and appropriate exceptions for all these information entities and enables legal deposit libraries that collect, catalogue and preserve our government publications and other official documents to engage in digitisation and digital curation too. They also enable libraries and other information services to provide access to and assist people with disabilities.

These exceptions are also essential for the various international and regional programmes that South Africa has with the EU and other countries, including open access, open science, and open data. Without these exceptions, prior copyright clearance is required for any transfer or conversion of material from the analogue format to digital format. This often involves copyright fees as well.

This is not only time-consuming, expensive and counter-productive, but a serious barrier to access to knowledge and resource-sharing, authorship, innovation and scientific collaboration.

Libraries, archives and other information services entities are currently deprived of benefits that their counterparts in developed countries and some developing countries have had for years.

These provisions have been formally supported by the international, regional and domestic library and archive communities, but also by many other organisations, ngos, government and private sector entities, etc.

Key supporters to note are:

- International Federation of Library Associations and Institutions (IFLA),
- International Council of Archives,
- Australian Digital Alliance
- Library Copyright Alliance (USA),
- African Library and Information Association (AFLIA),
- Southern African Regional Universities Association (SARUA)
- National Council for Library and Information Services (NCLIS),
- the Legal Deposit Committee (LDC),
- Universities South (USAf),
- Library and Information Association of South Africa (LIASA),
- Committee of Higher Education Libraries of South Africa (CHELSA),

as well as many other organisations, entities serving people with disabilities, NGOs, and information and intellectual property specialists around the world.

The Department of Higher Education and Training (DHET), the Department of Basic Education (DBE) and Department of Arts and Culture (DAC) also supported the entire Copyright Amendment Bill during its process in Parliament.

The International Federation of Library Associations and Institutions (IFLA) ([www.ifla.org](http://www.ifla.org)) has made a number of submissions to Parliament and have written to the President on several occasions with regard to the process and review of certain sections of the Bill. By virtue of my membership of the Library and Information Association (LIASA), I am also a member of IFLA ([www.ifla.org](http://www.ifla.org)), and serve as an expert advisor to its Committee on Copyright and Other Legal

Matters. I also work closely with EIFL ([www.eifl.net](http://www.eifl.net)) and was the SA representative for EIFL for a number of years. I fully support all their previous submissions and communications on this Bill, including those submitted on 9 July 2021. As IFLA says: *The delay caused by the reconsideration of exceptions and limitations in the Bill will have a costly impact on the development of libraries and therefore, on the development of the country by reducing the ability of citizens to have access to information, to knowledge and to research in the digital environment.*

## **F. COMPLIANCE WITH INTERNATIONAL TREATIES**

The fact that most of the exceptions in the Bill were adopted or adapted from copyright laws from other countries, or from WIPO Treaties and Treaty Proposals, WIPO Studies, research reports, IP documents, the EIFL model copyright law, etc., it stands to reason that they must be compliant. Fair use and the exceptions in the Bill have never been targeted as non-compliant nor have they been dealt with through any international dispute mechanisms through WIPO, WTO or any other authority.

Academic Opinion - <http://infojustice.org/wp-content/uploads/2021/05/South-Africa-CABAcademic-Opinion-05102021.pdf>

Thank you very much,

Kind regards

Denise Nicholson

Scholarly Communications and Copyright Consultant

Scholarly Horizons

[www.scholarlyhorizons](http://www.scholarlyhorizons)

email: [denise.nicholson@scholarlyhorizon.com](mailto:denise.nicholson@scholarlyhorizon.com)