COPYRIGHT AMENDMENT BILL

To amend the Copyright Act, 1978, so as to define certain words and expressions; to allow for further limitations and exceptions regarding the reproduction of copyright works; to provide for the sharing of royalties in copyright works; to provide for the payment of royalties in respect of literary, musical, artistic and audiovisual works; to provide for resale royalty rights; to provide for recordal and reporting of certain acts; to provide for the accreditation of collecting societies; to provide for a mechanism for settlement of disputes; to provide for access to copyright works by persons with disabilities; to provide for the licensing of orphan works; to strengthen the powers and functions of the Copyright Tribunal; to provide for prohibited conduct in respect of technological protection measures; to provide for prohibited conduct in respect of copyright management information; to provide for protection of digital rights; to provide for certain new offences; and to provide for matters connected therewith.

RELEVANT SECTIONS OF THE BILL THAT RELATE TO EDUCATION, RESEARCH, LIBRARIES AND ARCHIVES, GALLERIES AND MUSEUMS, AND PERSONS WITH DISABILITIES


12. Section 12 of the principal Act is hereby repealed. Insertion of sections 12A, 12B, 12C and 12D in Act 98 of 1978

13. The following sections are hereby inserted in the principal Act after section 12:

General exceptions from copyright protection

12A. (a) In addition to uses specifically authorized, fair use in respect of a work or the performance of that work, for purposes such as the following, does not infringe copyright in that work:

(i) Research, private study or personal use, including the use of a lawful copy of the work at a different time or with a different device;

(ii) criticism or review of that work or of another work;

(iii) reporting current events;

(iv) scholarship, teaching and education;

(v) comment, illustration, parody, satire, caricature, cartoon, tribute, homage or pastiche;

(vi) preservation of and access to the collections of libraries, archives and museums; and

(vii) ensuring proper performance of public administration.

(b) In determining whether an act done in relation to a work constitutes fair use, all relevant factors shall be taken into account, including but not limited to—

(i) the nature of the work in question;

(ii) the amount and substantiality of the part of the work affected by the act in relation to the whole of the work;
(iii) the purpose and character of the use, including whether—

(aa) such use serves a purpose different from that of the work affected; and

(bb) it is of a commercial nature or for non-profit research, library or educational purposes; and

(iv) the substitution effect of the act upon the potential market for the work in question.

(c) For the purposes of paragraphs (a) and (b) the source and the name of the author shall be mentioned.

**Specific exceptions from copyright protection applicable to all works**

12B. (1) Copyright in a work shall not be infringed by any of the following acts:

(a) Any quotation: Provided that—

(i) the extent thereof shall not exceed the extent reasonably justified by the purpose; and

(ii) to the extent that it is practicable, the source and the name of the author, if it appears on or in the work, shall be mentioned in the quotation;

(b) any illustration in a publication, broadcast, sound or visual record for the purpose of teaching:

Provided that such use shall not exceed the extent justified by the purpose: Provided further that, to the extent that it is practicable, the source and the name of the author, if it appears on or in the work, shall be mentioned in the act of teaching or in the illustration in question;

(c) the reproduction of such work by a broadcaster by means of its own facilities where such reproduction or any copy thereof is intended exclusively for lawful broadcasts of the broadcaster and is destroyed before the expiration of a period of six months immediately following the date of the making of the reproduction, or such longer period as may be agreed to by the owner of the relevant part of the copyright in the work: Provided that any such reproduction of a work may, if it is of an exceptional documentary nature, be preserved in the archives of the broadcaster, but shall, subject to the provisions of this Act, not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;

(d) the reproduction in the press or by broadcasting of a lecture, address or other work of a similar nature which is delivered in public, if such reproduction or broadcast is for information purposes:

Provided that the source and the name of the author should be indicated and that the author of the lecture, address or other work so reproduced shall have the exclusive right of making a collection thereof;

(e) subject to the obligation to indicate the source and the name of the author in so far as it is practicable—

(i) the reproduction by the press, or in a broadcast, transmission or other communication to the public of an article published in a newspaper or periodical on current economic, political or religious topics, and of broadcast works of the same character in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved;
(ii) the reporting of current events, or the reproduction and the broadcasting or communication to the public of excerpts of a work seen or heard in the course of those events, to the extent justified by the purpose; or

(iii) the reproduction in a newspaper or periodical, or the broadcasting or communication to the public, of a lecture, address, or sermon or other work of a similar nature delivered in public, to the extent justified by the purpose of providing current information;

(f) the translation of such work by a person giving or receiving instruction: Provided that—

(i) such translation is not done for commercial purposes;

(ii) such translation is used for personal, educational, teaching, judicial proceedings, research and professional advice purposes only: Provided that such use shall not exceed the extent justified by the purpose; or

(iii) such work is translated and communicated to the public for non-commercial purposes;

(g) the use of such work in a bona fide demonstration of electronic equipment to a client by a dealer in such equipment;

(h) the use of such work is for the purposes of judicial proceedings or preparing a report of judicial proceedings; or

(i) the making of a personal copy of such work by an individual for the individual’s personal use and made for ends which are not commercial: Provided that such use shall not exceed the extent justified by the purpose.

(2) For the purposes of subsection (1)(i), permitted personal uses include—

(a) the making of a back-up copy;

(b) time or format-shifting; or

(c) the making of a copy for the purposes of storage, which storage may include storage in an electronic storage medium or facility accessed by the individual who stored the copy or the person responsible for the storage medium or facility.

(3) The provisions of subsection (1) shall also apply with reference to the making or use of an adaptation of a work and shall also include the right to use the work either in its original language or in a different language.

(4) An authorization to use a literary work as the basis for the making of an audiovisual work, or as a contribution of the literary work to such making, shall, in the absence of an agreement to the contrary, include the right to broadcast such audiovisual work.

(5) The provisions of subsection (1)(d) and (e) shall apply also with reference to a work or an adaptation thereof which is transmitted in a diffusion service.

(6) Notwithstanding anything to the contrary in this Act, the Trademark Act, 1993 (Act No. 194 of 1993), and the Counterfeit Goods Act, 1997 (Act No. 37 of 1997), the first sale of or other assignment of ownership of an assigned original or copy of a work in the Republic or outside the Republic, shall exhaust the rights of distribution and importation locally and internationally in respect of such assigned original or copy.
Temporary reproduction and adaptation

12C. Any person may make 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 and the purpose of those copies or adaptations is—

(a) to enable the transmission of the work in a network between third parties by an intermediary or any other lawful use of the work; or

(b) to adapt the work to allow use on different technological devices, such as mobile devices, as long as there is no independent, economic significance to these acts.

Reproduction for educational and academic activities

12D. (1) Subject to subsection (3), a person may make copies of works or recordings of works, including broadcasts, for the purposes of educational and academic activities: Provided that the copying does not exceed the extent justified by the purpose.

(2) Educational institutions may incorporate the copies made under subsection (1) in printed and electronic course packs, study packs, resource lists and in any other material to be used in a course of instruction or in virtual learning environments, managed learning environments, virtual research environments or library environments hosted on a secure network and accessible only by the persons giving and receiving instruction at or from the educational establishment making such copies.

(3) Educational institutions shall not incorporate the whole or substantially the whole of a book or journal issue, or a recording of a work, unless a licence to do so is not available from the copyright owner, collecting society or an indigenous community on reasonable terms and conditions.

(4) The right to make copies contemplated in subsection (1) extends to the reproduction of a whole textbook—

(a) where the textbook is out of print;

(b) where the owner of the right cannot be found; or

(c) where authorized 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.

(5) The right to make copies shall not extend to reproductions for commercial purposes.

(6) 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.

(7) (a) 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.
(b) In the case of a contribution published in a collection that is issued periodically at least annually, an agreement may provide for a delay in the exercise of the author’s right referred to in paragraph (a) for up to 12 months from the date of the first publication in that periodical.

(c) When the contribution is made available to the public as contemplated in paragraph (a), the place of the first publication must be properly acknowledged.

(d) Third parties, such as librarians, may carry out activities contemplated in paragraphs (a) to (c) on behalf of the author.

(e) Any agreement that denies the author any of the rights contemplated in this subsection shall be unenforceable.

(8) The source of the work reproduced and the name of the author shall be indicated as far as is practicable on all copies contemplated in subsections (1) to (6).


14. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

(1) (a) The copyright in an artistic work shall not be infringed by its [inclusion] use in [a cinematograph film or a television broadcast or transmission in a diffusion service] another work, if—

(i) such [inclusion] use is merely by way of background, or incidental, to the principal matters represented in [the film, broadcast or transmission] that other work; or

(ii) the artistic work so used, is situated in a public place.

(b) The copyright in an artistic work shall not be infringed by the issue to the public of copies, or the communication to the public of anything, whose making was by virtue of this subsection not an infringement of the copyright.

18. Section 19A of the principal Act is hereby repealed. Substitution of section 19B of Act 98 of 1978, as inserted by section 18 of Act 125 of 1992

19. The following section is hereby substituted for section 19B of the principal Act:

General exceptions regarding protection of computer programs

19B. (1) A person having a right to use a copy of a computer program may, without the authorization of the copyright owner, observe, study or test the functioning of the program in order to determine the ideas and principles, which underlie any element of the program if that person does so while performing any of the acts of loading, displaying, executing, transmitting or storing the program, which he or she is entitled to perform.

(2) The authorization of the copyright owner shall not be required where reproduction of the code and translation of its form are indispensable in order to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, if the following conditions are met:
(a) The acts referred to in subsection (1) are performed by the licensee or another person having a right to use a copy of the program, or on their behalf by a person authorized to do so;

(b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in paragraph (a); and

(c) those acts are confined to the parts of the original program which are necessary in order to achieve interoperability.

(3) The information obtained through the application of the provisions of subsection (2) may not be—

(a) used for goals other than those to achieve the interoperability of the independently created computer program;

(b) given to others except when necessary for the interoperability of the independently created computer program;

(c) used for the development, production or marketing of a computer program substantially similar in its expression to the program contemplated in subsection (1); or

(d) used for any other act which infringes copyright.

(4) For the purposes of this section, ‘interoperability’ means the ability to exchange information and to use the information which has been exchanged.

Insertion of sections 19C and 19D in Act 98 of 1978

20. The following sections are hereby inserted in the principal Act after section 19B:

General exceptions regarding protection of copyright work for libraries, archives, museums and galleries

19C. (1) A library, archive, museum or gallery may, without the authorization of the copyright owner, use a copyright work to the extent appropriate to its activities in accordance with subsections (2) to (13): Provided that the work is not used for commercial purposes.

(2) A library, archive, museum or gallery may lend a copyright work incorporated in tangible media to a user or to another library, archive, museum or gallery.

(3) A library, archive, museum or gallery may provide temporary access to a copyright work in digital or other intangible media, to which it has lawful access, to a user or to another library, archive, museum or gallery.

(4) A library, archive, museum or gallery may, for educational or research purposes, permit a user to view a whole audiovisual work, listen to a full digital video disc, compact disc or other sound recording or musical work on its premises, in an institutional classroom or lecture theatre, or view such work or listen to such digital video disc, compact disc or other sound recording or musical work by means of a secure computer network, without permission from copyright owners, but may not permit a user to make a copy or recording of the work for commercial purposes.
(5) A library, archive, museum or gallery may make a copy of —

(a) any work in its collection for the purposes of back-up and preservation; and

(b) a publicly accessible website for the purposes of preservation.

(6) If a work or a copy of such work in the collection of a library, archive, museum or gallery is incomplete, such library, archive, museum or gallery may make or procure a copy of the missing parts from another library, archive, museum or gallery.

(7) A library, archive, museum or gallery may, without the consent of the copyright owner engage in format-shifting or conversion of works from aging or obsolete technologies to new technologies in order to preserve the works for perpetuity, and to make the resulting copies accessible consistent with this section.

(8) This Act does not prevent the making of copies in accordance with section 5 of the Legal Deposit Act, 1997 (Act No. 54 of 1997).

(9) A library, archive, museum or gallery may make a copy of a copyright work for its own collection when the permission of the owner of copyright, collecting society or the indigenous community concerned cannot, after reasonable endeavour, be obtained or where the work is not available by general trade or from the publisher.

(10) Notwithstanding any other section, a library, archive, museum or gallery may buy, import or otherwise acquire any copyright work that is legally available in any country.

(11) A library, archive, museum or gallery may reproduce for preservation purposes, in any format, any copyright work which has been retracted or withdrawn from public access, but which has previously been communicated to the public or made available to the public by the copyright owner, and make such work available for scholarship, research or any other legal use.

(12) (a) A library, archive, museum or gallery may make a copy of any copyright work and make it available to another library, archive, museum or gallery for a non-profit nature for the purposes of commemorating any historical or cultural event or for educational and research purposes.

(b) A library, archive, museum or gallery contemplated in paragraph (a) may also, for the purposes of that paragraph—

(i) take and show a photograph of such work or show video footage of such work;

(ii) create other images such as paintings of buildings; or

(iii) photograph artworks on public buildings such as wall art and graffiti, memorial sites, sculptures and other artworks which are permanently located in a public place.

(13) (a) Subject to paragraph (b), a library, archive, museum or gallery may supply to any other library, archive, museum or gallery a copy of a copyright work in its collection, whether by post, fax or secure digital transmission.

(b) The receiving library, archive, museum or gallery must delete any digital file received from the other library, archive, museum or gallery immediately after supplying the person who has requested it with a digital or paper copy of the work.
(14) An officer or employee of a library, archive, museum or gallery acting within the scope of his or her duties shall be protected from any claim for damages, from criminal liability and from copyright infringement when the duty is performed in good faith and where there are reasonable grounds for believing that—

(a) the work is being used as permitted within the scope of an exception in this Act or in a way that is not restricted by copyright; or

(b) the copyright work, or material protected by related rights is in the public domain or licensed to the public under an open licence.

(15) Nothing in this section shall diminish any rights that a library, archive, museum or gallery otherwise enjoy pursuant to other provisions of this Act, including those in section 12A: Provided that, in exercising rights provided for in this section or elsewhere in the Act, such library, archive, museum or gallery shall take reasonable steps to ensure that any digital copy supplied by it is accompanied by information concerning the appropriate use of that copy.

General exceptions regarding protection of copyright work for persons with disability

19D. (1) Any person as may be prescribed and that serves persons with disabilities may, without the authorization of the copyright owner, make an accessible format copy for the benefit of a person with a disability, supply that accessible format copy to a person with a disability by any means, including by non-commercial lending or by digital communication by wire or wireless means, and undertake any intermediate steps to achieve these objectives, if the following conditions are met:

(a) The person wishing to undertake any activity under this subsection must have lawful access to the copyright work or a copy of that work;

(b) the copyright work must be converted into an accessible format copy, which may include any means necessary to create such accessible format copy but which does not introduce changes other than those needed to make the work accessible to a person with a disability; and

(c) the activity under this subsection must be undertaken on a non-profit basis.

(2) (a) A person with a disability, or a person that serves persons with disabilities, to whom the work is communicated by wire or wireless means as a result of an activity under subsection (1) may, without the authorization of the owner of the copyright work, reproduce the work for personal use.

(b) The provisions of paragraph (a) are without prejudice to any other limitations or exceptions that the person referred to in that paragraph may enjoy.

(3) A person with a disability or a person that serves persons with disabilities may, without the authorization of the copyright owner export to or import from another country any legal copy of an accessible format copy of a work referred to in subsection (1), as long as such activity is undertaken on a non-profit basis by that person.

(4) The exception created by this section is subject to the obligation of indicating the source and the name of the author on any accessible format copy in so far as it is practicable.
Amendment of section 20 of Act 98 of 1978, as substituted by section 19 of Act 125 of 1992

21. Section 20 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

(1) Notwithstanding the [transfer] assignment of the copyright in a [literary, musical or artistic work, in a cinematograph film or in a computer program] work, the author shall have the right to claim authorship of the work, subject to the provisions of this Act, and to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author: Provided that an author who authorizes the use of his or her work in a sound recording or [cinematograph film or a television broadcast] audiovisual work or an author of a computer program or a work associated with a computer program may not prevent or object to modifications that are absolutely necessary on technical grounds or for the purpose of commercial exploitation of the work.

(2) Any infringement of the provisions of this section shall be treated as an infringement of copyright under Chapter 2, [and] except that, for the purposes of the provisions of the said Chapter, the author shall be deemed [to be] to have the right to take legal action related to the infringement of the provisions of this section, rather than the owner of the copyright in question.

Amendment of section 21 of Act 98 of 1978, as substituted by section 9 of Act 56 of 1980

22. Section 21 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

(c) Where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of [a cinematograph film] an audiovisual work or the making of a sound recording and pays or agrees to pay for it in money or money’s worth, and the work is made in pursuance of that commission, [such person shall, subject to the provisions of paragraph (b), be the owner of any copyright subsisting therein by virtue of section 3 or 4] the ownership of any copyright subsisting in the work shall, subject to subsection (3), be governed by written agreement between the parties;

(b) by the substitution for subsection (2) of the following subsection:

(2) Ownership of any copyright conferred by section 5 shall initially vest in the state or the international or local organization concerned, and not in the author; and

(c) by the addition after subsection (2) of the following subsection:

(3) (a) The agreement contemplated in subsection (1)(c) may limit the ownership of copyright in the relevant work so that the exclusive right to do or to authorize any of the acts contemplated in sections 7, 8 or 9, as may be applicable, is limited to one or more of such acts, necessary for the purpose of that commission.

(b) Where the agreement contemplated in subsection (1)(c) does not specify who the copyright owner is, limited ownership of the copyright shall vest in the person commissioning the work, so that the exclusive right to do or to authorize any of the acts contemplated in sections 7, 8 or 9, as may be applicable, is limited to such rights as may be necessary for the purpose of the commission.
(c) The author of a work contemplated in subsection (1)(c) may approach the Tribunal for an order—

(i) where the work is not used by the person who commissioned the work for the purpose commissioned, licensing the author to use that work for such purpose, subject to a fee determined by the Tribunal payable to the person who commissioned the work; or

(ii) where the work is used for a purpose other than that for which it was commissioned, ordering the person who commissioned the work to make payment of royalties to the author for such other use.

(d) When considering a licence contemplated in paragraph (c)(i), the Tribunal must take all relevant factors into account, including the following:

(i) The nature of the work;

(ii) the reason why, and period for which, the person who commissioned the work did not use the work; and

(iii) public interest.

(e) Where the work contemplated in subsection (1)(c) is of a personal nature to the person who commissioned the work, the Tribunal may not licence the author to use that work.”

Insertion of section 39B in Act 98 of 1978 34. The following section is hereby inserted in the principal Act after section 39A:

Unenforceable contractual term

39B. (1) To the extent that a term of a contract purports to prevent or restrict the doing of any act which by virtue of this Act would not infringe copyright or which purport to renounce a right or protection afforded by this Act, such term shall be unenforceable.

(2) This section does not prohibit or otherwise interfere with open licences or voluntary dedications of a work to the public domain.”.

The above are sections from the final version of the Copyright Amendment Bill (vers. 5)(Feb 2019)