Dear Ms Fubbs and Mr. Hermans,

The University of the Witwatersrand, Johannesburg, fully supports the contents of the submission by the Universities South Africa (USAf), attached hereto for easy reference.

We also wish to extend our sincere thanks to you for considering concerns by many stakeholders about a two-phased Bill. We appreciate that you have kept it as one holistic Bill, with fair use provisions and exceptions for education, research, libraries, archives, galleries and museums and people with disabilities. As said before, South Africa is strongly supporting Treaty Proposals internationally at WIPO by the Africa Group for limitations and exceptions for the above-mentioned purposes. You and your Committee are therefore commended for proactively including many of these provisions in the Bill Draft No. 2. Provisions for disabled communities will help expedite ratification of the Marrakesh Treaty too. We note that the exceptions for computer programs in 19B of 2017 Bill seem to have been omitted from Bill Draft No. 2. Please ensure they are re-inserted. We trust that fair use with 4 factors and all the above-mentioned exceptions will remain in Bill Draft No. 2, and be included in the Final Bill for enactment.

We know there have been a lot of discussions and debates about hybrid and/or open fair dealing and open fair use, and many myths are circulating about its ‘dangers’ for creators and authors. The fair use provisions in the Bill Draft No. 2 will help all users, creators and other producers of information and copyright works in the digital world. That is why a number of countries have already adopted fair use with 4 criteria/factors, whilst some are moving very close to it, e.g. Canada and Kenya. Others are considering fair use, such as Australia, Hong Kong and Ireland. Although the UK has not moved in that direction yet (but may do so in the future via Brexit), the well-known Hargreaves Review extolled the benefits of fair use and described it as “the big once and for all fix of the UK”.

Singapore in its Proposed Amendments to its Copyright Regime in 2016, stated: “The Copyright Act includes five factors the courts may take into account when determining whether a particular use is “fair” or not, one of which is “the possibility of obtaining the creative work within a reasonable time at an ordinary commercial price”. This factor is viewed as being less relevant in light of current technology and it is proposed that it be removed from the defence of “fair use”. (Sources: https://bit.ly/2cMHOR1 and http://www.orionw.com/blog/news/ip/proposed-amendments-to-singapores-copyright-regime - also confirmed by Ministry of Law). Dr Daniel Tan, Vice Dean (Academic Affairs) & Director (Communications) : Associate Professor, Dean's Chair, Faculty of Law, National University of Singapore, also confirmed the following in an email to me on 17 June 2018: “The statutory revisions are currently being drafted and it seems unlikely that Singapore will regress and likely that the fifth factor of general fair use in section 35(2) will be dropped”.

For more resources on Fair dealing/Fair Use see:
https://libguides.wits.ac.za/Copyright_and_Related_Issues/fairuse_fairdealing
We trust our comments, together with USAF’s submission, will be taken into account.

Thank you very much
Kind regards
Denise Nicholson

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“Information is the currency of democracy.” (Thomas Jefferson (1743–1826)).”