Amendment of SA Copyright Law: a long and bumpy road

Denise R. Nicholson  BA HDip Lib (UNISA),  LLM (WITS)
Published and Cited Author – orcid.org/0000-0002-8591-3276
Scholarly Communications Librarian
Scholarly Communications & Copyright Services Office
University of the Witwatersrand, Johannesburg

ReCreate ZA Copyright Seminar
Cape Town - 19 March 2019
Current Copyright Act 98/1978

- 41 years old and broken!
- Outdated exceptions for education, research, libraries & archives
- Fair dealing and limited exceptions do not address the digital world
- No provisions for people with disabilities
- Copyright limitations & exceptions are permitted by international Treaties
- L & Es are fundamental for access to knowledge, etc.
Attempts to Amend Copyright Law (1998-2002)

- Educational and library sectors – lobbying since 1998!


- Copyright Amendment Act No. 9 of 2002

- Impasse
Regional Copyright Research (2007-2011)

- African Copyright & Access to Knowledge (ACA2K) Project 2007-2011 – 8 countries including South Africa

- The stricter the copyright law, the higher the level of non-compliance

- Infringing activities, rather than copyright law, facilitate access to information in most of the study countries - http://www.iplaw.uct.ac.za/ipu/research/aca2k_repository
DTI Initiatives to Reform Copyright Act

- 2009 – Genesis of Bill – DTI commissions University of Pretoria to develop studies
- 2011 - Farlam Copyright Review Commission – to address royalty issues
- 2011/2 – Commissioned WIPO Study on “The Economic Contribution of Copyright-Based Industries in South Africa”.
- 2014 – Regulatory Impact Assessment
- 2018 – IP Property Laws Amendment Act 2013 approved but not yet promulgated
Plans to Amend Copyright Law (2014)

- In 2014 budget speech, Minister Davies announced plans to amend the Copyright law

- Proposed to address key findings in Copyright Review Commission & key challenges raised by artists

- Proposed measures to regulate fair use and fair contract terms
Copyright Amendment Bill 2015

- 2015 – Country-wide public consultations by DTI
- July 2015 – Bill published for public comment
- 27 August 2015 – DTI Multi-stakeholder Conference, Boksburg
- DTI received large number of submissions on Bill, resulting in stakeholder workshops
- Socio-economic impact assessments (SEIAS) were completed in 2016
Framework of Bill

- Human Rights and other international Conventions and Treaties
- Treaty proposals at WIPO SCCR (Africa Group, and IFLA and alliance partners)
- eIFL Model Copyright Law – expansion of WIPOs Model Law for Developing Countries - [http://www.eifl.net/system/files/resources/201607/eifl_draft_law_2016_online.pdf](http://www.eifl.net/system/files/resources/201607/eifl_draft_law_2016_online.pdf)
- Appropriate clauses from other progressive copyright regimes
- African Copyright & Access to Knowledge Project (ACA2K) - [http://www.iplaw.uct.ac.za/ipu/research/aca2k_repository](http://www.iplaw.uct.ac.za/ipu/research/aca2k_repository)
- SA Constitution, National Development Plan & Sustainable Development Goals
Copyright Amendment Bill 2017
PC on Trade & Industry

- 2017 - Revised Bill presented to the Portfolio Committee on Trade and Industry (PC).
- Early August 2017, PC public hearings for stakeholders.
- On 14 October 2017, ANC Legal Research Group’s multi-stakeholder.
- October 2017 - Bill presented to National House of Traditional Leaders
- PC deliberated on Bill at many meetings in late 2017/early 2018.
- In February 2018, technical team to align Bill with Constitution, etc.
- In May 2018, PC planned a 2-phased Bill, then reverted back to one Bill, with later redrafts.
Status of Copyright Amendment Bill

- Approved by the Portfolio Committee on Trade & Industry – 15 November 2018
- Approved by National Assembly – 5 December 2018
- 2 February meetings of National Council of Provinces (NCoP)
- Call for submission on final Bill – deadline 22 February 2019
- Meetings 6 & 20 March 2019 - then NCoP vote on 28 March 2019
- Once approved, it will go to President for signature and enactment
Mischief in the Media!
Churlish Vandalism!!

WARNING TO COMPOSERS & AUTHORS!!
So... here's the GOOGLE Lobby, recognising the strong opposition the Bill is now getting from the SA Creative Industries.

RECREATE SOUTH AFRICA INVITES YOU TO COPYRIGH AMENDMENT BILL PANEL DISCUSSION
The National Council of Provinces intends to adopt the Copyright Amendment Bill on 20 March. To help prepare press and stakeholders, a panel of experts created and public interest advocates will explain the Bill's key provisions and their potential impact.

Introduction by Denese Nicholls
Panelists:
GOOGLE, Simon Payne, American Legal Academic
GOOGLE, Dr Tobias Schonwerter, UCT Legal Academic
Douglas Scott, which one?
GOOGLE, Dr Lea Mseyne, WITS Academy
GOOGLE? Wondele Dzimene, The PR specialist?

A live stream of the event will be available from: https://youtu.be/x5JpRH4G-g

For more information or to request press interviews, contact Nonando
Tel: nonando3@gmail.com

DATE: 19 MARCH 2019
TIME: 1700 - 1900
VENUE: 6 SPIN STREET, CAPE TOWN
RSVP: RECREATEZA@GMAIL.COM

Can you see even ONE SINGLE PROMINENT SA WRITER, COMPOSER, PLAYRIGHT, INVENTOR or OTHER COPYRIGHT HOLDER in this gang... why not?

They just won't stop till they have YOUR COPYRIGHT!
Conclusion

The Bill -

- Gives access and dignity to people with disabilities
- Facilitates access for research, teaching and learning, and social development.
- Enhances creativity and innovation and empowers authors & creators in the digital world
- Updates and ‘future-proofs’ our copyright law for the 21st century and 4th industrial revolution.
- Aligns SA’s law with other progressive copyright regimes
- Enables accessibility, and preservation of library & related collections
- Secures our cultural documentary heritage
- Regulates Collecting Societies to protect authors and creators from dying paupers
- Prevents unfair contracts from overriding legal exceptions
- Benefits ALL stakeholders
THANK YOU

Denise Rosemary Nicholson
Denise.Nicholson@wits.ac.za
Copyright Amendment Bill (final version) –

Fair Use Resources, Benefits and Best Practice Guidelines
http://libguides.wits.ac.za/Copyright_and_Related_Issues/fairuse_fairdealing

Copyright & Related Resources
http://libguides.wits.ac.za/Copyright_and_Related_Issues

Other Related Resources – Recreateza’s website