

Copyright and Access to Information for Persons with Disabilities

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Access to Information

“The right to access to information and ideas is vital for any society. Freedom, prosperity and the development of society depend on education, as well as on unrestricted access to knowledge, thought, culture and information. This right to intellectual freedom is essential to the creation and development of a democratic society.” (IFLA/FAIFE)

What Our Constitution Says

Section 9(1) : “Everyone is equal before the law and has the right to equal protection and benefit of the law”.

Section 9(3) : The state may not unfairly discriminate directly or indirectly against anyone on various grounds, including disability.

International Intellectual Property (IP) Commitments

- Berne Convention (rev. Paris 1971, am.1979)
- TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) (1995)
- WIPO Copyright Treaty (1996) and WIPO Performances and Phonograms Treaty (1996) – signed but not ratified
- Current copyright law is compliant with international commitments

Copyright law in South Africa

- Copyright Act No. 98 of 1978 (as amended) & Regulations
- Last amendment - Copyright Amendment Act No. 9 of 2002 – needle-time royalties
- No regional co-operation or harmonization of copyright. Copyright law is territorial – only applies nationally.
- Current copyright law has no provisions for people with disabilities

L & E's in Current Copyright Law

- Section 12 of Copyright Act – ‘**Fair Dealing**’ allows **copying for research & private study; personal or private use; criticism or review; and reporting current events**. May also **quote** a fair portion, with proper acknowledgement and ‘**by illustration**’ for teaching purposes.
- Section 13 (Regulations) - limited exceptions for education (e.g. single handouts in classroom) & print preservation for libraries
- No provisions for conversion of works into accessible formats

Electronic Copyright

- Current law totally outdated - does not address digital
- No provisions for resource-sharing or sharing accessible formats across borders
- Anti-circumvention technologies block information, e.g. text-to-speech software blocked on e-books
- Many problems for users who have disabilities, e.g. costs of equipment/devices; internet access, limited bandwidth or data, copyright fees, etc.

Electronic Copyright (cont'd)

- Cumbersome copyright clearance process
- Conversions take a long time, sometimes prejudicing students who receive their course material late
- Contract law overrides copyright law
- Specific uses, e.g. interlibrary loans, conversions, digitisation, etc. have to be negotiated through consortia licences or permission obtained before reproducing works

For Copyright Legislation and Related Resources

[http://libguides.wits.ac.za/Copyright and Related issues](http://libguides.wits.ac.za/Copyright%20and%20Related%20issues)

Finding a Balance

The **WIPO Copyright Treaty** recognizes the need to -

“maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information.”

SO WHERE IS THE BALANCE?



BIAS TOWARDS RIGHTS-OWNERS

Copyright Reform Process

- Educational & library sectors – been lobbying since 1998!
- South African Vice-Chancellors Association & Committee of Technikon Principals mandated Task Teams to challenge restrictive Draft Regulations (1998) and Proposals to Amend the Copyright Act (2000)
- Succeeded in getting Parliament to interdict Dept of Trade and Industry and both sets of proposals were withdrawn from Copyright Amendment No. 9 of 2002 (needle-time rights)
- Legislative impasse for many years

Copyright Amendment Bill 2015

- DTI announced amendments in 2014 for musicians - Farlam Commission Recommendations
- My communications with DTI - provided many documents to assist legal team to draft Bill
- Copyright Amendment Bill 2015 published for comments
- Over 150 submissions received by DTI from stakeholders
- DTI workshops, stakeholder meetings and conference

Submissions accessible at:

[https://libguides.wits.ac.za/Copyright and Related Issues/S
A Copyright Amendment Bill 2015](https://libguides.wits.ac.za/Copyright%20and%20Related%20Issues/S%20A%20Copyright%20Amendment%20Bill%202015)

Framework for Copyright Amendment Bill

- Human Rights & other international Conventions/Treaties
- Treaty proposals supported by African Group at WIPO SCCR
- Progressive foreign copyright regimes, e.g. Fair Use
- Global sustainable development goals
- eIFL Model Copyright Law - expands on WIPOs Model Law for Developing Countries
- SA Constitution and National Development Plan (NDP)
- Various pieces of legislation relating to Libraries, Education, Archives, Disabilities, etc.
- 2015 Cape Town Declaration - commits to fair and balanced copyright laws

Fair Use Provisions

- Fair Use has 4 criteria that determine lawful use. It is not a licence to copy carte blanche! It will address –
 - ever-changing technologies;
 - transformative users;
 - text and data mining;
 - new innovations;
 - 3D creations,
 - Artificial intelligence
 - Unforeseen uses in the future as technology evolves

See: Fair Use and Best Practice Guidelines

[http://libguides.wits.ac.za/Copyright and Related Issues/fairuse fairdealing](http://libguides.wits.ac.za/Copyright%20and%20Related%20Issues/fairuse%20fairdealing)

L & E's for Education & Academic Activities

- L & Es will facilitate access to information
- Will transform research, teaching and learning in digital environment
- Course-packs, resource-sharing, format-shifting, using films and music for teaching, etc.

L & E's for Libraries & Related Sectors

- Libraries, archives, etc. provide access for users and producers of information
- Legal Deposit libraries – preserve cultural heritage
- Bill L & E's will assist libraries and related sectors to carry out their statutory mandates.
- Allows institutional repository deposits and digital preservation, format-shifting to new technologies, etc.

Marrakesh Treaty 2013

- SA supported Marrakesh Treaty but never signed it.
- DTI has undertaken to ratify Treaty, once Copyright Bill is finalised. This will enable cross-border sharing of accessible formats.
- Provisions from Treaty included in Bill but have been expanded to address all disabilities.
- Accessible formats will also open up a whole new market for SA publishers & authors.

General Exceptions for Persons with Disabilities

19D. (1) Any person or an organization 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.

General Exceptions for Persons with Disabilities

(2) (a) A person with a disability, or an organization 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 an organization that serves persons with disabilities may, without the authorization of the copyright owner export to or import from another country any 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 or organization.

(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.”

Copyright Amendment Bill 2017

- 2017 Bill published for comment and invitation to present at Parliamentary hearings - July 2017
- Portfolio Committee (PC) on Trade & Industry Public hearings - August 2017 for all stakeholders
- Small task team was tasked to redraft Bill
- Bill went to National House of Traditional Leaders for comment.

Submissions accessible at:

[http://libguides.wits.ac.za/Copyright and Related Issues/SA Copyright Amendment Bill 2017](http://libguides.wits.ac.za/Copyright%20and%20Related%20Issues/SA%20Copyright%20Amendment%20Bill%202017)

Support for L & E's in Bill

- International Federation of Libraries & Institutions (IFLA)
- Global Expert network on Copyright User Rights
- Library Copyright Alliance (USA)
- Australian Digital Alliance & Australian Libraries Copyright Commission,
- German Coalition for Action “Copyright for Education and Research”,
- African Union for the Blind
- Electronic Information for Libraries (eIFL)
- Department of Arts and Culture
- National Department of Education
- Department of Arts & Culture’s Legal Deposit Committee
- National Council for Library and Information Services (NCLIS)
- Library and Information Association of SA (LIASA)
- Universities South Africa (USAf)
- Southern African Research Universities Association (SARUA)
- Informally by NGOs, e.g. Freedom of Expression Institute, Media Monitoring Group, Wikipedia, and ENCODE

Opposition by Rights-Owners (Copyright Alliance)

- Written submissions to 2015 & 2017 Bills by various stakeholders who formed Copyright Alliance (e.g. SAMRO, DALRO, PASA, ANFASA, CAPASSO, etc.
- Strong opposition to Bill in public hearings in August 2017 and in media in 2018. Fear-mongering and myths about Fair Use.
- Educational provisions – they believe these will negatively impact on publishing industry & authors

Re-Create Coalition to Counter Copyright Alliance

In May 2018 Re-Create ZA (www.re-createza.org) was launched for writers, filmmakers, photographers, poets, producers of accessible format materials (BlindSA) and other SA creators, to promote balanced copyright laws that enable, not restrict -

- the Right To Create.
- the Right To Own.
- the Right To Earn.

Copyright Amendment Bill

Draft No. 2, 2018

- Bill was going to be split into 2 phases – 1st for musicians' rights and 2nd for all other L & Es. Tertiary & library sectors, Blind SA and ReCreate challenged the Portfolio Committee on this. **Decided to keep one Bill.**
- Revised Bill, and new call for submissions on specific clauses – deadline was extended to 18 July 2018

Specific clauses and Submissions can be found at:

[http://libguides.wits.ac.za/Copyright and Related Issues/S
A Copyright Amendment Bill 2018](http://libguides.wits.ac.za/Copyright_and_Related_Issues/S_A_Copyright_Amendment_Bill_2018)

Copyright Amendment Bill

Draft No. 3, 2018

- Revised, and new call for submissions on one clause - deadline 21 September 2018. See Draft 3, 2018:
[http://libguides.wits.ac.za/Copyright and Related Issues/Versio n3 2018](http://libguides.wits.ac.za/Copyright%20and%20Related%20Issues/Versio%20n3%202018) (has fair use and all the aforementioned exceptions)
- Technical team now tasked to give input on technical issues in Bill (not on content or policy decisions made by Portfolio Committee)
- Next step unclear – to House of Traditional Leaders and/or National Council of Provinces? Trying to find out and will keep HEDSA updated

Useful Resources on Disabilities

- Learning Disabilities and Disorders Affecting Learning:
<http://libguides.wits.ac.za/LearningDisabilities>
- Physical & Neurological Disabilities/Disorders affecting Learning
- [http://libguides.wits.ac.za/Physical and Neurological Disabilities](http://libguides.wits.ac.za/Physical%20and%20Neurological%20Disabilities)
- Resources for Blind and Visually-Impaired Persons
[http://libguides.wits.ac.za/Physical and Neurological Disabilities](http://libguides.wits.ac.za/Physical%20and%20Neurological%20Disabilities)
- Resources for Deaf and Hard of Hearing Persons
[http://libguides.wits.ac.za/deaf and hardofhearing](http://libguides.wits.ac.za/deaf%20and%20hardofhearing)

Open Access & Other Resources

Open Access, A2K & Scholarly Communication

http://libguides.wits.ac.za/openaccess_a2k_scholarly_communication

Open Educational Resources

http://libguides.wits.ac.za/Open_Educational_Resources

Plagiarism, Citation & Referencing Styles

http://libguides.wits.ac.za/plagiarism_citation_and_referencing

Scholarly Research Resources

http://libguides.wits.ac.za/Scholarly_Research_Resources

Mobile Technologies & Related Issues

https://libguides.wits.ac.za/Mobile_Technologies

Improving Academic Writing Skills

- Write my Paper: an ultimate guide to perfect academic paper writing
<http://paperfellows.com/write-my-paper>
- How to Paraphrase rather than Quote –
[http://libguides.wits.ac.za/Scholarly Research Resources/Paraphrasing](http://libguides.wits.ac.za/Scholarly_Research_Resources/Paraphrasing)
- Write it in your Own Words -
<https://owl.English.purdue.edu/owl/resources/619/1>
- Academic Writing - <https://owl.english.purdue.edu/owl/section/1/2/>
- Using English for Academic Purposes -
<http://www.uefap.com/writing/writfram.htm>
- Writing Tips – <http://libguides.wits.ac.za/Scholarly-Research-Resources>
- 150 Resources to Help You Write Better, Faster, and More Persuasively -
<http://oedb.org/ilibrarian/150-writing-resources/>

Publishing Research

- Resources on Publishing your Research -
<http://libguides.wits.ac.za/ScholarlyCommunication>
- Beware of Predatory Publishers (*BEALL'S LIST CLOSED 15/1/2017*)
http://libguides.wits.ac.za/openaccess_a2k_scholarly_communication/Predatory_Publishers
- Predatory Book Publishers (Do not publish with VDM Verlag and Lambert Academic Publishers (LAP))
- Accredited Journals for DHET purposes (reputable journals) –
<http://libguides.wits.ac.za/ScholarlyCommunication/accreditedjournals>
- Targeting the right journal for your research -
<http://www.slideshare.net/deanrathbone5/targeting-journals>
- Open access Publishing (*see sub-Tabs too*) -
<http://libguides.wits.ac.za/ScholarlyCommunication>
- Directory of OA Journals – <http://www.doaj.org>
- Directory of OA Books – <http://www.doabooks.org>
- Scielo SA – <http://www.scielo.org.za>

Conclusion

- We have a national imperative to build an informed nation and to redress and/or remove inequalities and discrimination
- We have to build and sustain vibrant communities and empower people through access to information
- The proposed amendments in the Bill should facilitate equitable access to knowledge and positively transform our society.

**WE LOOK FORWARD TO A FAIR AND
BALANCED COPYRIGHT LAW IN THE NEAR FUTURE!**

THANK YOU



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