

The South African Copyright Law: a historical overview and challenges to address access to knowledge issues in a country in transformation

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Abstract:

This paper provides a historical overview of developments in the South African copyright law and challenges by the educational sector and libraries, to address access to knowledge issues, particularly in a country in transformation. South Africa's current Copyright Act was enacted in 1978. Because of its colonial background, South Africa's current copyright law was adapted from British copyright law. It also incorporated provisions from the Berne Convention. The Act has been amended several times, most notably in 1992 to categorise computer programs as a separate, distinct class of protected work. In 1997, it was amended to bring it into line with the TRIPS agreement. In 2002, it was amended to provide 'needle-time' rights for owners of sound recordings (embodying musical works) and performers of the musical works, to enable them to receive royalties in respect of the broadcast, or performance, of these sound recordings. Section 13 Regulations governing limitations and exceptions for libraries and archives and education have not been updated since 1978. These Regulations were an adapted version of the Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals, published in the United States House Report 94-1476 (1976). These Regulations are limited and restrictive and have become a barrier to access to information, particularly in the digital environment.

This paper tracks important initiatives by the educational sector and libraries since 1998, to address access to information needs of libraries, archives, persons with sensory disabilities, educators and researchers. After successfully challenging Government proposals to amend the Copyright Regulations (1998) and the Copyright Act (2000), the educational sector and libraries have continued to lobby for more balanced copyright laws, but to date the Department of Trade and Industry has not delivered in this regard. South Africa (through the Africa Group) strongly supported the adoption of a Treaty for the Blind and Visually Impaired at the WIPO Diplomatic Conference in Marrakesh, Morocco, and on 27 June 2013 the Marrakesh Treaty was adopted. South Africa has not ratified this Treaty as yet, since it is finalising its Intellectual Property Policy and will need to amend its

Copyright law before ratifying this Treaty. This Treaty has been ratified by a number of WIPO Member States to date and this has put pressure on South Africa to do the same, so that blind and visually impaired persons can benefit from the Treaty's provisions as soon as possible. The Department of Trade and Industry needs to fast-track matters, and in the process, amend and update the copyright law. The paper will highlight the library and higher educational sectors' initiatives and interactions with the Department of Trade and Industry in an attempt to expedite the process and to modernise the copyright legislation in the context of international treaties, WIPO's Development Agenda, IFLA's proposals at WIPO, and access to knowledge initiatives. The outcome and implications of proposed amendments to the copyright law will also be discussed. It is hoped that this paper will provide some guidelines for other developing countries on how to change their copyright laws to address access to knowledge and transformation issues in a digital world.

Keywords:

intellectual property, copyright, South Africa, limitations and exceptions, access to knowledge

Introduction

Access to information is crucial to the development and transformation of least-developed and developing countries. Copyright law has generally become a barrier to accessing information in such countries. Many have not updated their copyright laws for a long time, or have updated them without taking advantage of legal flexibilities called limitations and exceptions to the exclusive rights of authors and creators, which are allowed in international intellectual property treaties. In some African countries, through pressure from rights-holders or via US Free Trade Agreements, as in the case of Morocco, the copyright term of protection has been extended for a further 20 years, which generally benefits developed countries, not the African countries in question. Transformation in any of these said countries is a slow, often difficult process. However, positive outcomes are possible if copyright law is appropriately updated to address the socio-economic and development needs of the citizens of those countries.

South Africa's copyright transformation has been a very long and slow process. Although its copyright law has been amended for various reasons since 1978, the provisions for education, archives and libraries date back to 1978. Attempts to amend the copyright law were successfully challenged in 1998 and 2000, by the educational and library sectors, as they were far more restrictive than the existing law. South Africa has been a democracy since 1994, yet it has not yet amended its copyright law to address the issues around access to information for education, libraries and archives, person with disabilities and preservation in a digital world. Transformation can only progress where people have equal access to information and the freedom to express, share and re-use information for innovation and development purposes. There is now pressure on the South African Government to amend its Copyright Act and Regulations during the course of 2015.

South African Copyright Law: Background

Because of its status as a British colony up to 1910 and a British dominion until 1961, South Africa's first intellectual property law, the Patents, Trade Marks, Designs and Copyright Act No. 9 of 1916, effectively adopted the British Imperial Copyright Act of 1911. In May 1961, South Africa became an independent republic and its 1916 Copyright Act was replaced by Act 63 of 1965, still modelled on the British Copyright law (Rens et al., n.d.). The Copyright Act of 1965 was later replaced by Copyright Act No. 98 of 1978. This Act, although amended at various intervals, still remains in force today.

The policy processes which led to these Acts have never taken into account that South Africa is a developing country. Instead they've been marked by aspirations to copy European law, specifically United Kingdom law, as an example of what was claimed to be advanced law (Rens et al., n.d.: 8).

The 1978 Regulations (Section 13 of the Act) were an adapted version of the Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals, published in the United States House Report 94-1476 (1976). These Regulations have not been amended to date and have very limited exceptions and limitations for libraries and archives, and education.

South Africa became a signatory to the Berne Convention for the Protection of Literary and Artistic Work (Berne Convention) in 1928, and signed the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1995. It has signed the WIPO Internet Treaties, i.e. the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), but has not yet ratified them. In 2013, South Africa strongly supported the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled ('The Marrakesh Treaty'), adopted in Morocco in June 2013, but has yet to ratify it.

Access to information is crucial to development and transformation

The International Statistical Institute (ISI, 2015) lists South Africa as a developing country. South Africa is also generally recognised as a developing country by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). As a new democracy since 1994, it is a country in transformation with serious socio-economic challenges. Access to knowledge is crucial to development and transformation for all South Africans and it is entrenched in the Republic's supreme law, the Constitution of South Africa (Act No. 108 of 1996) with its progressive Bill of Rights.

The state is mandated to "respect, protect, promote and fulfil the rights of all people in the Bill of Rights". The Constitution applies to natural and juristic persons, as well as all law. It binds the legislature, the executive, the judiciary and all organs of state. (Kinghorn, 2002: 19).

Section 16 of the 1996 Constitution provides that –

1. Everyone has the right to freedom of expression, which includes
 - a. freedom of the press and other media;
 - b. freedom to receive or impart information or ideas;

- c. freedom of artistic creativity; and
- d. academic freedom and freedom of scientific research.

South Africa is therefore mandated to facilitate access to information and knowledge in all national legislation and policies to advance its national, regional and international development and transformation strategies. However, copyright has become a barrier to accessing information and knowledge, and the updating of its copyright legislation is long overdue.

“[C]opyright exceptions and limitations are the main mechanism for ensuring a fair balance between the competing interests of copyright owners on the one hand and user interests on the other” (Nicholson and Schönwetter, 2008: para. 9).

Without copyright exceptions and limitations, copyright owners would have an almost complete monopoly regarding access to their copyright protected materials. As a result, every use of such material would be subject to permission (a licence), regardless of the societal value of the use; and access to knowledge material would be severely hampered. (Nicholson and Schönwetter, 2008: para. 9)

Timeline of Attempts to Amend the South African Copyright Law

Draft Regulations, 1998

The Department of Trade and Industry (DTI) published Draft Regulations to amend Section 13 of the SA Copyright Act for public comment in Government Gazette No. 19112, dated 7 August 1998. These proposals were supported by the Publishers’ Association of South Africa (PASA), the Dramatic, Artistic and Literary Rights Organisation (DALRO), the Intellectual Property Action Group (IPACT), the International Publishers’ Association (IPA) and the International Federation of Reprographic Rights Organizations (IFRRO) (Gray and Seeber, 2004). However, due to the restrictive nature of the proposed Draft Regulations, strong objections were raised by the library and tertiary educational sectors. As a result, a Copyright Task Team was set up by the South African Vice-Chancellors’ Association (SAUVCA) and the Committee of Technikon Principals (CTP), which represented all the public tertiary institutions in South Africa, as well as some government departments. The Task Team’s mandate was to challenge the proposed amendments which had negative implications for education, research, libraries and archives, and impractical and inadequate exceptions for persons with sensory disabilities (Nicholson, 2012).

After a strong lobby campaign against the restrictive Draft Regulations by the educational and library sectors, which had been excluded from the legislative process, the Minister of Trade and Industry, Mr Alex Erwin, acknowledged that the process lacked transparency. He agreed to restart the process to include all stakeholders, including the library and educational sectors and some organisations serving the blind. In March 1999, the DTI organised a workshop in Pretoria, to which all stakeholders were invited to present position papers. They were then invited to submit comments on the Draft Regulations to the DTI by May 1999 (Nicholson, 2012).

With pro bono assistance from a specialist intellectual property law firm, John & Kernick from Johannesburg, the SAUVCA/CTP Task Team drafted a questionnaire and gathered comments on the Draft Regulations from libraries, educational institutions, non-governmental organisations, and some government departments in South Africa. All comments and recommendations were consolidated and submitted to the DTI on 28 May 1999. Because of the seriousness of the matter for information-users, the Task Team brought the matter to the attention of the opposition party, the Democratic Party at the time. This resulted in the withdrawal of the Draft Regulations by the DTI, despite strong opposition from PASA, DALRO and their international partners (Nicholson, 2012). DALRO refuted the arguments put forward by SAUVCA (Gray and Seeber, 2004). The workshop held in March 1999, merely demonstrated that the polarisation of views between rightsholders and information-users appeared irreconcilable (Gray and Seeber, 2004). Despite attempts by the print industries sector and its international partners to get the amendments reinstated, this was ‘met with silence from the DTI’ (Gray and Seeber, 2004: 77).

Proposed Amendments to the Copyright Act, 2000

On 10 May 2000, the DTI published proposals to amend the Copyright Act and other intellectual property (IP) laws for public comment in Government Gazette Notice 1805, No. 21156. This time SAUVCA and the CTP mandated a representative Electronic Copyright Task Team to challenge these proposals which were again restrictive to education, research, libraries and archives, and failed to address the digital environment and the needs of persons with sensory disabilities (Nicholson, 2012).

As a result of a successful lobby campaign by the educational and library sectors, and this time with the assistance of the Minister of Education, Dr Kadar Asmal, the DTI withdrew the controversial proposals. The only proposals that were not withdrawn related to the issue of ‘needle-time’ or ‘pay for play’ which “refers to the payment of a royalty in respect of the broadcast, or performance of a sound recording” (The SA Music ..., n.d.: para. 2). These provisions were included in the Copyright Amendment Act No. 9 of 2002.

The withdrawal of these controversial proposals was rejected by rights-holders and resulted in an impasse in the legislative process. The print industries argued that it is was –

the role of government to intervene in the resolution of conflicts around legislative needs and to ensure that a strong and effective copyright regime exists in the country as an enabling environment for authors and content creators; for industry players; and for the consumers of information and knowledge (Gray and Seeber, 2004: 79).

In October 2001, in response to the DTI’s abovementioned action, IFRRO, PASA and DALRO adopted the following resolution to pressure the DTI, but it was unsuccessful:-

IFRRO:

1. *Urges* the South African Government to pass proposed amendments in the South African Copyright Act that were published for comment in the Government Gazette of 10 May 2000
2. *Encourages* the South African Government to prepare legislation to enable ratification of the WCT and WPPT by the South African Parliament. (IFRRO, 2001: para 8).

SAUVCA and the CTP established Intellectual Property Sub-Committees in 2001 in an attempt to resolve the impasse in the legislative process. Various meetings were convened with PASA to endeavour to resolve matters, but these proved to be unsuccessful. To date, there have been no further attempts to amend the copyright legislation. However, the World Intellectual Property Organization (WIPO)'s Development Agenda and multilateral developments resulting in the Marrakesh Treaty have given new impetus to the South African government to review the current copyright legislation.

The Electronic Communications and Transactions (ECT) Act, 2002

Although South Africa is a signatory to the WIPO Copyright Treaty (WCT), it has not yet ratified it. The provisions of this Treaty have therefore not been incorporated into the current Copyright Act.

In order to address the problem of cyber-crime, and to ensure compliance with certain clauses of the WCT, the Department of Communication published a Green Paper on e-Commerce in 2001 for public comment. SAUVCA IP sub-Committee submitted comments and recommendations, as well as several queries relating to anti-circumvention protection measures, fair dealing and the need for appropriate limitations and exceptions. These were not taken into account when the ECT Act No. 25 was promulgated in 2002 (Nicholson, 2012: 109).

The Act includes strict provisions for technological protection measures and prohibition of circumvention measures, without any exceptions for legitimate library or educational purposes, or for persons with sensory disabilities. Section 86 of the said Act creates a new cyber offence relating to the unauthorised access to, interception of or interference with data, which in essence, is an anti-circumvention prohibition. The anti-circumvention prohibition applies to data messages, namely electronic representations of information in any form (Nicholson, 2012: 109).

The ECT Act prohibits the circumvention of TPMs and prevents uses of copyright-protected works that are expressly permitted under the Copyright Act, for example, fair dealing, browsing electronic resources for library purposes, accessing e-books via text-to-speech software by blind persons, or accessing public domain material. In essence, the ECT Act provisions of Article 86 override the current copyright exceptions. Blind persons in particular are negatively affected as anti-circumvention technologies have the capacity to block software that enables conversion from text to speech in electronic books and other material, effectively rendering the work inaccessible, even though the blind person may have already paid for the electronic copy (Nicholson, 2012: 109).

Visser raises concern about the inflexibility and lack of exceptions in the ECT Act and states that -

[i]n South Africa, the prohibition on the circumvention of TPMs that control access to copyright works is complete – not only the circumvention of access control is proscribed, but also trafficking in devices that are “designed primarily” for circumventing access control. And the prohibition is absolute – there are no exceptions; no technical exception (such as for reverse engineering, encryption research, and security testing); nor an exception in favour of research or education (Visser, 2006: 62).

The ECT Act in its current form is arguably unconstitutional in that it blocks legitimate access to information and infringes users' rights which the Copyright Act grants to them. There are no limitations and exceptions in this Act to enable legitimate access to information.

Visser (2006: 60) raises the issue that -

[t]he fact that possession of the physical object that contains the copyright work (the CD-ROM for example) no longer guarantees access to the work can have serious implications for the possessor of such object. Even a lawful possessor will not be able to access a copyright work shielded behind a TPM without an access key, or without circumventing the TPM. And without access, it is impossible to use the copyright work.

Article 86 has negative implications for blind persons and infringes their 'fair dealing' rights in terms of the copyright law. Not only are there no limitations and exceptions for blind persons in the current copyright law, but the restrictive conditions of the ECT Act exacerbate their access problems. Despite recommendations being made to the Government by various stakeholders to review the ECT Act and the Copyright Act relating to persons with sensory disabilities, neither Act has been amended to date (Nicholson, 2012: 110).

Once the copyright term has expired, works generally fall into the public domain. The ECT Act, however, allows public domain material to be 'locked up' under TPMs, sometimes indefinitely due to obsolescent devices rendering works inaccessible. This means that persons with sensory disabilities, who in the normal passage of time, would be able to use and convert public domain material into accessible formats, would now be prohibited from using that material. Indirectly, the ECT Act has proved to be discriminatory towards blind persons, "creating technological barriers where no legal barriers exist" (Nicholson, 2006: para. 29).

Works in the public domain protected by TPMs are also 'rendered inaccessible, as any circumvention (even circumvention of technological protection applied to works in the public domain) will result in a contravention of the prohibition. This can, of course, result in a digital lock-up of works in the public domain (Visser, 2006: 60).

Visser is adamant that "where developing countries do adopt protection of TPMs against circumvention, appropriate exceptions and limitations in favour of research and education should be enacted at the same time" (Visser, 2006: 61). Persons with sensory disabilities would therefore benefit from such exceptions.

South Africa should take cognisance of Article 6(4) of the EU Copyright Directive –

which provides that where, in the digital environment, a particular DRM mechanism restricts access to and use of content in a way which is inconsistent with a rights management proposition embodied in the law – i.e. a DRM mechanism denies a user the ability to perform some content management activity guaranteed by an express exception or limitation – then some process has to be found allowing the user to perform the content management activity provided for in the exception or limitation. (Garnett, 2006: 16).

In Crews' study on Limitations and Exceptions for Libraries and Archives, he found that 26 member countries of WIPO have adopted exceptions for legal workarounds for anti-circumvention of Technological Protection Measures (IFLA, 2011). In an attempt to provide solutions for the South African copyright law, Conroy (2006: 273) suggests –

...that the prohibition should strike only at the act of circumvention but should not concern itself with the devices used to perform such circumvention. Not only would this be in line with traditional copyright law, but it obviates the problem of legitimate uses being unable to use the circumvention devices they require to exercise their privileges under a copyright exception.

Conroy also suggests that the Copyright Act should “be added to the list of statutes in Column A of the Schedule 1, and sections 85-89 in Column B” (2006: 287) of the ECT Act. In this way, copyright works would then effectively be excluded from the anti-circumvention provisions of Chapter XIII of the ECT Act (Conroy, 2006). She also suggests a series of consequential amendments be made to the Copyright Act.

The solution recommended by the ACA2K Project’s SA research team is “to declare the copyright exceptions and limitations contained in the Copyright Act as valid defences to any claims based upon the ECT Act” (ACA2K, 2009: 8).

Proposed US-SACU Free Trade Agreement, 2006, and its TRIPS-Plus IP Chapter

From 2003 until 2006, the Office of the US Trade Representative was involved in secret negotiations with the Southern African Customs Union (SACU) (i.e. Botswana, Namibia, Lesotho, Swaziland and South Africa) regarding a Free Trade Agreement (FTA) with a TRIPS-Plus IP Chapter.

Since the negative impact of the US/Australian Free Trade Agreement on education and research was well-documented by IP experts and researchers in Australia, the author thought it necessary to alert the Chief Negotiator of the South African Foreign Trade Office, Mr. Xavier Carim, to these documents and to the negative implications of a TRIPS-Plus regime for libraries and archives, research, education and persons with sensory disabilities in South Africa and other SACU countries (Nicholson, 2012).

The UK Department of International Development (DFID) and USAID offered to assist the author by placing her concerns on their trade agenda with the DTL. She was later invited to meet with Mr. Carim to discuss the US-SACU FTA IP Chapter. She provided him with parliamentary debates and other documents relating to the US-Australian FTA, which indicated the restrictive nature of the IP Chapter and its negative implications for research, education, libraries and information users in general, including persons with sensory disabilities. Apart from the TRIPS-Plus IP Chapter in the US-SACU FTA, there were a number of other controversial clauses which were not acceptable to the SACU countries (Nicholson, 2012). In late 2006, negotiations with the USA were suspended, “due to divergent views on the scope and level of ambition for a FTA” (USTR, n.d.). This was a positive outcome as the provisions of TRIPS-Plus would have exacerbated the copyright problems for education, research, libraries and archives, and persons with sensory disabilities. On July 16, 2008, the United States and SACU signed a Trade, Investment, and Development Cooperative Agreement (TIDCA), which recognized “the importance of providing adequate and effective protection and enforcement of intellectual property rights in accordance with international standards and of membership in and adherence to intellectual property rights conventions” (SACU TIDCA ..., 2008: 2), but this Agreement did not affect the copyright laws of the SACU countries in any way.

DTI's Draft IP Policy Framework

South Africa is a member of the African Group at WIPO and supported the World Blind Union's Treaty for Blind, Visually Impaired and Other Reading Disabled Persons. It also supports the African Group's Treaty Proposal for Limitations and Exceptions for Education, Libraries and Archives. Although the Government hosted a number of stakeholder seminars in Cape Town (2004), Port Elizabeth (2005) and Pretoria (2010 and 2011) in an attempt to address issues affecting print-handicapped persons, the legal status quo remains (Nicholson, 2012).

As a result of the ongoing access problems experienced by its members, the South African National Council for the Blind (SANCB) established a Copyright Coalition including its Council, the SA Library for the Blind, Tape Aids for the Blind, Pioneer Printers, Blind SA Braille Services, the SA Disability Alliance, Access to Knowledge Alliance, University of the Witwatersrand, University of Johannesburg, University of Cape Town, University of Kwazulu-Natal and various other institutions and IP academics. Various workshops and meetings with the DTI have been held in recent years in an attempt to sensitize the Government and other stakeholders about the urgency of addressing the access needs of blind persons (Nicholson, 2012: 112-3).

On 13 September 2010, the DTI organised a Copyright Treaty Consultative Workshop to formulate South Africa's position on the proposed WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons (TVI). The TVI was initiated by the World Blind Union and proposed by Brazil, Ecuador and Paraguay at WIPO in 2009. At the said DTI workshop, a stakeholders' Position Document was adopted entitled 'The South African Position Regarding Copyright Limitations and Exceptions', which supported a 'two-phased Treaty' at WIPO. The Summary of the Position Document reads as follows:-

Although some countries have provision for conversions into alternative formats, their copyright laws are territorial and do not address the broader international situation of cross-border exchange of information. Phase 1 of the Two-phased Treaty would address these issues. The main beneficiaries of Phase 1 will be blind, visually impaired and reading disabled persons living in developing countries, as they will have far greater access to works currently only available in high-income countries (SANCB, 2011).

However, even developed countries will benefit enormously from the liberalisation of access to foreign collections of accessible works and from the expansion of rights for blind, visually impaired and reading-disabled persons, e.g. in areas where access has generally been restricted by technological protection measures or restrictive licensing or contracts. Moreover, given the importance of economies of scale, everyone will benefit from the larger global market for accessible works. This will also create new markets for publishers and job opportunities for business persons interested in commercially producing works in alternative formats (SANCB, 2011).

At a DTI meeting in 2011, the DTI informed stakeholders that it was preparing an IP Policy Framework document which would be circulated for public comment later that year. This Policy Framework would be the basis for updating the current IP laws. Although this document had not yet been published for comment, the DTI agreed to send a draft to the SANCB Coalition for input (Nicholson, 2012). The Coalition submitted a number of recommendations, including protection of the public domain and limitations and exceptions for blind and visually impaired persons, cross-border sharing of accessible formats,

exceptions relating to technology circumvention, temporary acts of reproduction, time-, format- and space-shifting, fair use provisions, provisions for orphan works and translations into local languages, parody and satire, teaching, interoperability of software, re-engineering of software, research, education and other purposes, and that official, administrative and legal works, of whatever form, are automatically in the public domain in line with Cabinet's approved Free and Open Source Software policy of 2007 (SANCB, 2011).

After the SANCB recommendations were submitted to the DTI in 2011, there was silence on the IP Policy Framework for a few years. In that period, the DTI, despite strong opposition from the majority of stakeholders, succeeded in getting its Intellectual Property Amendment Bill enacted by Parliament in 2013. This legislation included traditional knowledge works as an additional category in the SA Copyright Act and other IP legislation. This has added an extra layer of copyright protection on works which were previously in the public domain, and as a result, it has shrunk the public domain.

In 2013, the Marrakesh Treaty was adopted by all WIPO member states, including South Africa. As mentioned before, South Africa has not yet ratified this Treaty as the legislative process requires it to finalise its IP Policy Framework and to amend its Copyright Act, before the treaty can be ratified by Cabinet and Parliament. Pressure is mounting though on South Africa to ratify this treaty to enable blind and visually impaired persons to benefit from the provisions of the treaty.

In September 2013, the DTI finally published the South African Draft National Policy on Intellectual Property for public comment. Many stakeholders submitted comments or strong objections, which led to the DTI appointing an independent company to embark on a regulatory impact assessment (RIA). Together with the RIA report, the revised and final IP Policy document will now need to be approved by Cabinet and Parliament during the course of 2015. At the same time, the DTI has been tasked to draft a new Copyright Bill. Its plan of action includes engaging with stakeholders at roundtable meetings to assess their copyright needs; sourcing relevant documentation and examples of other countries' recent copyright amendments and investigating possible copyright models for South Africa. It is anticipated that the Draft Copyright Bill will be published for public comment during the latter part of 2015.

What is significant is that the copyright legislative process has become more transparent in South Africa and the educational and library sectors have now been included in the process from the beginning – a far cry from when the DTI attempted to amend the Copyright Regulations back in 1998. All-inclusive stakeholder involvement is essential for positive discussions and augurs well for an improved copyright law for everyone.

To assist the DTI in the drafting phase, the educational and library sectors submitted various documents to the DTI, including the eIFL Model Copyright Law (revised 2014); the proposed WIPO Treaty on Limitations and Exceptions for Libraries and Archives; the Open Review of the SA Copyright Act; the research findings of the African Copyright and Access to Knowledge (ACA2K) Project (2007-2010); the provisions of the Marrakesh Treaty; the recent copyright amendments in the UK; recent studies in the EU and USA on orphan works; WIPO studies on limitations and exceptions for libraries and archives, and education; the UK Commission on IP Rights, the Gower and Hargreaves Studies on IP in the UK, and many other useful documents.

Copyright Amendment Bill 2015

The DTI published the Copyright Amendment Bill 2015 on 27 July 2015 for public comment by 26 August 2015. This has given stakeholders a chance to discuss and make submissions to the DTI. An opportunity to make oral presentations to the Parliamentary Portfolio Committee on Trade and Industry will also be afforded to the public, before the Bill is finalised and submitted to Cabinet and Parliament for approval and enactment. This is a lengthy process which means that the amended copyright legislation is only likely to be enacted in 2016.

Conclusion

Access to information and progressive development policy is crucial to the growth of South Africa and the African continent. It is important that new copyright legislation closes the knowledge and digital divides by addressing the needs of libraries and archives, education, research, persons with disabilities and digital issues, within the context of a developing country and a new democracy in transformation. If this is the case, it is envisaged that South Africa's new copyright provisions will provide the impetus to bridge information and knowledge gaps in development and transformation programmes in South Africa and provide a precedent for other developing and least-developed countries when they amend their copyright laws. It is important that copyright laws in South Africa and the rest of Africa reflect a fair balance between the rights of copyright owners and the just demands of information-users to access, use and re-use copyright works for the purpose of research, innovation, creativity, development, transformation and access to knowledge for all.

(This paper is an amended version of Chapter 4 of the author's Master of Laws (LLM) Dissertation entitled 'Accommodating Persons with Sensory Disabilities in South African Copyright Law' - see: full Dissertation at: <http://hdl.handle.net/10539/12525>)

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