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| **Proposed amendments - Copyright** | **2nd advert?** | **DTIC comment** | **CLSO comment** |
| **Clause 1** |  |  |  |
| Amendment of definition of “accessible format copy” (adding “including to”) | No | The word including should be retained as well as the revised definition The amendment is wider than the Marrakesh Treaty definition or phrase and provides more rights for persons with disabilities  **Recommend: Retain wording as advertised** | Agree  **Recommend: Retain wording as advertised** |
| New definition of “authorized entity” | Yes | This is the language currently used in the Treaty, applicable entities will apply. Regulations will guide further on the  prescribed authorized entities  It is recommended the definition of authorized entity be retained, including the words’ as one of its primary activities’ and  reference to government  The language is similar to the one in the treaty  **Recommend: Retain wording as advertised** | Iro (a) – Recommend to either use the already recognised bodies, or use “as prescribed” – see the proposed amendment in clause 33, the new section 39(2)  *CLSO note: The wording of the definition as advertised is sufficient – the regulations will in any event apply and there is a description given in Par (b) that describes which NPCs qualify.*  **Recommend: Retain wording as advertised** |
| Substitute the definition of “broadcast” to accord with that of PPAB | Yes | It is recommended that wire be retained in the Bill due to unintended consequences and concerns raised by the public.  The definition is not exactly as the one in the Electronic Communication Act (but the dtic has not identified a conflict in the laws. The using of the definitions can be considered but it is recommended that for now, the definitions in the CAB be retained.  The review of the definitions may require time and consultations to assess them and other implications It should also be noted that there  are international discussions on broadcasting (WIPO Treaty discussions) and legislation under review, this definition likely to be  reviewed from other legislative perspective and may change  **Recommend: Retain wording as advertised, but include “wire”** | Option 1: The existing definitions in the Copyright and Performers’ Protection Acts to be retained until the review of the definition in the ECA has been concluded (i.e. retain “wire” as well);  Option 2: Use the definition of ECA in both Acts or a definition proposed by SAMRO (see notes page) (either definition will have to be advertised);  *(Note: Aligning the definition of Broadcast in the Copyright Amendment Bill with the definition that is in the Performers’ Protection Amendment Bill, and retaining “wire”, will align CLSO’s view with that of DTIC)*  **Recommend: Retain wording as advertised, but include “wire”** |
| New definition of “lawfully acquired” | Yes | It is recommended that the definition of lawfully acquired be removed from the Bill This is because of the unintended consequence and interpretation challenges and impact on sectors such as libraries. The courts can interpret lawfully acquired  **Recommend:**   * **definition of “lawfully acquired” be removed** * **the addition of “lawfully acquired” to S12B(1)(h) and subsection S12(3)(b) be removed** | It is recommended that the definition of “lawfully acquired”, the addition of the phrase to S12B(1)(h) and subsection S12(3)(b) be removed. It is implied that copies may only be made from legally obtained works and need not be stated.  *Alternative option:* If the Committee wants to retain the aspect of lawfulness in the text of the Bill, it is recommended that the definition be excluded in order to avoid unintentionally stifling the hands of the courts on subtle differences and that “lawfully accessed” rather be used in 12B(1)(h) and that subsection S12(3)(b) be removed.  **Recommend:**   * **definition of “lawfully acquired” be removed** * **the addition of “lawfully acquired” to S12B(1)(h) and subsection S12(3)(b) be removed** |
| Amendment of definition of “technological protection measure” - include “product” and “design” and delete *(b)* | Yes | It is recommended that TPM definition as amended and the changes be retained as this  strengthens the Bill The deletion of subsection (b) is supported  2022.05.17: The proposed wording has too many unintended consequences, including consumer law, competition law and other security related breaches. It seems to not be proper for the SA context  **Recommend: Retain wording of Bill before advertisement + Adding “product” (also to paragraph (b) of definition of TPM).** | The possible consequences of the stricter approach includes the limitation of 3 “freedoms”:   * to use the product as the consumer wants to; * the freedom of the consumer to choose from whom to buy accessories, consumables, services and repairs; and * the freedom of auditors to uncover and publicise defects in the products (“any disclosure could jeopardise the TPM”).   It is recommended that iro the definition of TPM   * Retain original wording, including retaining par (b); and * Adding “product” (also to paragraph (b) of definition of TPM).   2022.05.17: The proposed wording has too many unintended consequences, including consumer law, competition law and other security related breaches. It seems to not be proper for the SA context  **Recommend: Retain wording of Bill before advertisement + Adding “product” (also to paragraph (b) of definition of TPM).** |
| Amendment of definition of “technological protection measure circumvention device” | Yes | The advertised changes to the TPMs circumvention devices strengthen the Bills and should be retained The changes to the Technological Protection Measure circumvention device definition to be retained This is similar to the EU Directive and other international copyright laws This will not be unique to South Africa  2022.05.17: The proposed wording has too many unintended consequences, including consumer law, competition law and other security related breaches. It seems to not be proper for the SA context  **Recommend: Retain wording of Bill before advertisement = Add “or service”** | Because of the possible consequences of the stricter approach (limitation of 3 “freedoms”, it is recommended that iro the definition of TPM circumvention device:   * Add “or service” * Paragraphs (b) and (c) to be removed   2022.05.17: The proposed wording has too many unintended consequences, including consumer law, competition law and other security related breaches. It seems to not be proper for the SA context  **Recommend: Retain wording of Bill before advertisement + Add “or service”** |
| **Clause 5** |  |  |  |
| Delete retrospective clause and delegations to the Minister | No | Already agreed to by Committee | |
| **Clause 7** |  |  |  |
| Delete retrospective clause and delegations to the Minister | No | Already agreed to by Committee | |
| Gender neutral drafting | No | Already agreed to by Committee | |
| **Clause 9** |  |  |  |
| Delete retrospective clause and delegations to the Minister | No | Already agreed to by Committee | |
| **Clause 11** |  |  | |  |
| Gender neutral drafting | No | Already agreed to by Committee | |
| **New Clause** |  |  |  |
| Inclusion of amendment to section 11A – rights iro published editions | Yes | A correction is supported to remove the ‘ in services to read as ‘service’  (*DTIC note: the error was in the advert, not in the Act)*  **Recommend: Retain the wording as advertised** | The Act reads “service” – the error was in the “mock bill” that was advertised, No amendment required  **Recommend: Retain the wording as advertised** |
| Inclusion of amendment to section 11B – rights iro computer programmes | Yes | A correction is supported to remove the ‘ in services to read as ‘service’  (*DTIC note: the error was in the advert, not in the Act)*  **Recommend: Retain the wording as advertised** | The Act reads “service” – the error was in the “mock bill” that was advertised, No amendment required  **Recommend: Retain the wording as advertised** |
| **Clause 13** |  |  |  |
| Section 12A(1) – deletions of par (i), (iv) and (vi) | No | It is recommended to retain all the uses, i e personal copies, teaching, scholarship, education and research and library uses  **Recommend: Retain paragraphs (i), (iv) and (vi)** | If the duplications do not cause harm, and in fact serve as useful examples complimenting specific exceptions, we recommend to retain these paragraphs.  **Recommend: Retain paragraphs (i), (iv) and (vi)** |
| Section 12A*(c)* – iro name of the author, change “and” to “as well as” and add “if it appears on the work” | No | It is recommended the words if it appears on the work can be added to section 12A(c) to align with the amendment  **Recommend: Add “if it appears on the work” iro name of author** | DTIC to advise iro adding the phrase “to the extent that it is practicable” to 12A(c).  **Recommend: Add “if it appears on the work” iro name of author** |
| The name can be mentioned where it appears and where it is possible  **2022.05.17: As this clause deals with general principles recommend that the phrase “as far as it is practicable” not be included in the Bill.** | *Note: “where it is possible” will be an acceptable substitute –*  **2022.05.17: As this clause deals with general principles recommend that the phrase “as far as it is practicable” not be included in the Bill.** |
| Section 12A – Addition of par *(d)* applying fair use principles to all exceptions | Yes | **Recommendation: Delete 12A(d)** | **Recommendation: Delete 12A(d)** |
| Section 12B(1)*(a)*(i) – Quotations: substitute “justified by the purpose” with “fair practice” | No | There was a number of stakeholders who recommended fair practice in the Bill Fair practice does not have to be defined as it is a language and standard in copyright law and internationally recognized, included in the Berne Convention (Article 10 for quotations and illustrations for teaching) It is also in the principal Act.  2022.05.17: Both “fair practice” and “extent justified by the purpose” are used in Berne.  **2022.05.17: Recommend: use BOTH fair practice and extent justified by the purpose** | Recommend both “fair practice” and “extent justified by the purpose” is included as that is what is contained in the treaty  **2022.05.17: Recommend: use BOTH fair practice and extent justified by the purpose** |
| Section 12B(1)*(a)*(ii) – Quotations: delete “to the extent that it is practicable” and “or in” before “the work” (only retain “on the work”) | No | The name can be mentioned where it appears and where it is possible  **2022.05.17: As the Act already has this exception and does not provide the limit iro “as far as is practicable”, recommend that it not be included in the Bill either.** | Need to carefully consider consequences. Recommend that the Committee considers retaining “to the extent that it is practicable”.  **2022.05.17: As the Act already has this exception and does not provide the limit iro “as far as is practicable”, recommend that it not be included in the Bill either.** |
| **Section 12B(1)*(b)* – moving this paragraph to section 12D(9) (use of illustrations for teaching)** | **No** | **Agree – more suited in 12D (education)** | **Agree – more suited in 12D (education)** |
| Section 12B(1)*(c)* (will become *(b)*) – “ephemeral rights”: changing the exception to accord with the Canadian Act | Yes | It is recommended that this amendment be removed from the Bill and the current  amendment be retained  **Recommend: Wording of Bill prior to advert be retained** | Recommendation: The proposed wording came from the Canadian Act and may not be ideal for inclusion in South African Copyright law without significant adjustments.  It is recommended that the wording of the Bill as is be retained and that the DTIC can consider the Canadian Act’s wording for purposes of new policy development and a new Amendment Bill.  **Recommend: Wording of Bill prior to advert be retained** |
| Section 12B(2)*(d)* iro name of the author – add “if it appears on the work” | No | Already agreed to by Committee | |
| Section 12B(1)*(e)* delete “in so far as practicable” | No | The name can be mentioned where it appears and where it is possible  **2022.05.17: As the Act already has this exception and does not provide the limit iro “as far as is practicable”, recommend that it not be included in the Bill either.** | Need to carefully consider consequences. Recommend that the Committee considers retaining “to the extent that it is practicable”.  **2022.05.17: As the Act already has this exception and does not provide the limit iro “as far as is practicable”, recommend that it not be included in the Bill either.** |
| Section 12B(1)*(e)* iro name of the author – add “if it appears on the work” | No | Already agreed to by Committee | |
| Section 12B(1)*(e)*(i) – delete (i) (Current topics) | No | Already agreed to by Committee | |
| Section 12B(1)*(e)*(ii) – substitute “to the extent justified by the purpose” with fair practice |  | There was a number of stakeholders who recommended fair practice in the Bill Fair practice does not have to be defined as it is a language and standard in copyright law and internationally recognized, included in the Berne Convention (Article 10 for quotations and illustrations for teaching) It is also in the principal Act.  (2022.05.17:Berne uses “extent justified by the information purpose”)  **2022.05.17: Recommend: use only extent justified by the purpose** | Recommend “extent justified by the purpose” only is retained (not fair practice)  (2022.05.17:Berne uses “extent justified by the information purpose”)  **Recommend: use only extent justified by the purpose** |
| Section 12B(1)*(e)*(iii) – correct the intro sentence (“for purposes of providing current information”) | No | Already agreed to by Committee | |
| Section 12B(1)*(e)*(iii) – substitute “to the extent justified by the purpose” with fair practice | No | There was a number of stakeholders who recommended fair practice in the Bill Fair practice does not have to be defined as it is a language and standard in copyright law and internationally recognized, included in the Berne Convention (Article 10 for quotations and illustrations for teaching) It is also in the principal Act.  (2022.05.17:Berne uses “extent justified by the information purpose”)  **Recommend: use only extent justified by the purpose** | Recommend “extent justified by the purpose” only is retained (not fair practice)  (2022.05.17:Berne uses “extent justified by the information purpose”)  **Recommend: use only extent justified by the purpose** |
| Section 12B(1)*(f)* (translations) – changed the wording to read “non-commercial purposes” instead of “not for commercial purposes” | No | Already agreed to by Committee | |
| Section 12B(1)*(f)* (translations) – added furtherance of language and culture as a reason for translation | No | The amendment to be retained  **Recommend: Wording as amended to be retained** | No need to advertise  **Recommend: Wording as amended to be retained** |
| Section 12B(1)*(f)* (translations) – substitute “to the extent justified by the purpose” with fair practice | No | The amendment to be retained as advertised The drafting suggestion recommended is already in the provision - except the extent justified by the purpose wording  2022.05.17:Berne does not specifically provide for translations. Article 9 Berne provides for specific exceptions – the requirement set in Article 9 can be deemed satisfied by using the test “Fair practice”  **2022.05.17: Recommend: Only retain fair practice** | Recommend “extent justified by the purpose” only is retained (not fair practice)  2022.05.17:Bernedoes not specifically provide for translations. Article 9 Berne provides for specific exceptions – the requirement set in Article 9 can be deemed satisfied by using the test “Fair practice”  **Recommend: Only retain fair practice** |
| The ‘or’ is recommended to be removed  Each provision can be read independently  2022.05.17: The intention here is that all 3 provisions apply at once – all three must be present at the same time for the exception to be valid.  **Recommend: “and” in stead of “or”** | “Or” in a list according to drafting conventions means that each provision is read on its own.  2022.05.17: The intention here is that all 3 provisions apply at once – all three must be present at the same time for the exception to be valid.  **Recommend: “and” in stead of “or”** |
| Section 12B(1)*(i)* – personal copies – substitute “individual” with “natural person” |  | Already agreed to by Committee | |
| Section 12B(1)*(i)* – personal copies – adding lawfully acquired | No | It is recommended that the definition of lawfully acquired be removed from the Bill This is because of the unintended consequence and interpretation challenges and impact on sectors such as libraries The courts can interpret lawfully acquired  **Recommend:**   * **definition of “lawfully acquired” be removed** * **the addition of “lawfully acquired” to S12B(1)(h) and subsection S12(3)(b) be removed** | It is recommended that the definition of “lawfully acquired”, the addition of the phrase to S12B(1)(h) and subsection S12(3)(b) be removed. It is implied that copies may only be made from legally obtained works and need not be stated.  or  If the Committee wants to retain the aspect of lawfulness in the text of the Bill, it is recommended that the definition be excluded in order to avoid unintentionally stifling the hands of the courts on subtle differences and that “lawfully accessed” rather be used in 12B(1)(h) and that subsection S12(3)(b) be removed.  **Recommend:**   * **definition of “lawfully acquired” be removed** * **the addition of “lawfully acquired” to S12B(1)(h) and subsection S12(3)(b) be removed** |
| Section 12B(1)*(i)* – personal copies –moving S12A(1) requirements iro different times / devices | No | If the recommendation iro S12A is accepted (retain all examples), the reference to a “different time or with a different device” can be removed here.  **Recommend: S12A’s wording to revert to section 12A and removed here** | If the recommendation iro S12A is accepted (retain all examples), the reference to a “different time or with a different device” can be removed here.  **Recommend: S12A’s wording to revert to section 12A and removed here** |
| Section 12B(1)*(i)* – personal copies – adding device to be owned by that natural person | No | If the recommendation iro S12A is accepted (retain all examples), the reference to a “different time or with a different device” can be removed here.  **Recommend: S12A’s wording to revert to section 12A and removed here** | If the recommendation iro S12A is accepted (retain all examples), the reference to a “different time or with a different device” can be removed here.  **Recommend: S12A’s wording to revert to section 12A and removed here** |
| Section 12B(1)*(i)* – personal copies – substitute “to the extent justified by the purpose” with fair practice | No | There was a number of stakeholders who recommended fair practice in the Bill Fair practice does not have to be defined as it is a language and standard in copyright law and internationally recognized, included in the Berne Convention (Article 10 for quotations and illustrations for teaching) It is also in the principal Act.  2022.05.17: Berne does not specifically provide for personal copies. Article 9 Berne provides for specific exceptions – the requirement set in Article 9 can be deemed satisfied by using the test “Fair practice  **Recommend: Only retain fair practice** | Recommend “extent justified by the purpose” only is retained (not fair practice)  2022.05.17: Berne does not specifically provide for personal copies. Article 9 Berne provides for specific exceptions – the requirement set in Article 9 can be deemed satisfied by using the test “Fair practice  **Recommend: Only retain fair practice** |
| Section 12B(2) – excluding “ephemeral rights” where a licence is available | Yes | It is recommended that this amendment be removed from the Bill and the current  amendment be retained  **Recommend: Wording of Bill prior to advert be retained** | It is recommended that the wording of the Bill as is be retained and that the DTIC can consider the Canadian Act’s wording for purposes of new policy development and a new Amendment Bill.  **Recommend: Wording of Bill prior to advert be retained** |
| Section 12B(3)*(b)* - Personal copy factors do not apply to other copies | Yes | It is recommended that the definition of lawfully acquired be removed from the Bill This is because of the unintended consequence and interpretation challenges and impact on sectors such as libraries The courts can interpret lawfully acquired  **Recommend:**   * **definition of “lawfully acquired” be removed**   **the addition of “lawfully acquired” to S12B(1)(h) and subsection S12(3)(b) be removed** | It is recommended that the definition of “lawfully acquired”, the addition of the phrase to S12B(1)(h) and subsection S12(3)(b) be removed. It is implied that copies may only be made from legally obtained works and need not be stated.  or  If the Committee wants to retain the aspect of lawfulness in the text of the Bill, it is recommended that the definition be excluded in order to avoid unintentionally stifling the hands of the courts on subtle differences and that “lawfully accessed” rather be used in 12B(1)(h) and that subsection S12(3)(b) be removed.  **Recommend:**   * **definition of “lawfully acquired” be removed** * **the addition of “lawfully acquired” to S12B(1)(h) and subsection S12(3)(b) be removed** |
| Section 12C(1) – correcting the lay out of the section | No | This was a lay-out error pointed out in a submission. The correction was thus technical in nature, with no material impact. It was also in response to inputs from the public – and did not have to be advertised again.  **Recommend: Wording as corrected iro the lay out error, to be retained** | This was a lay-out error pointed out in a submission. The correction was thus technical in nature, with no material impact. It was also in response to inputs from the public – and did not have to be advertised again.  **Recommend: Wording as corrected iro the lay out error, to be retained** |
| Section 12C (2) three step test | Yes | It is recommended that the three step test be removed in the Bill in 12 C and 12 D  **Recommend: Remove the test as advertised – revert to wording before the advert** | Do not recommend inclusion of treaty wording  **Recommend: Remove the test as advertised – revert to wording before the advert** |
| Section 12D (1) substitute “to the extent justified by the purpose” with fair practice | No | Recommended to remove fair practice in 12D(1) as it is addressed in section 12D(8)  **Recommend: Remove fair practice in 12D(1)** | Recommend using “fair practice” in addition to “extent justified by the purpose”  **Recommend: Remove fair practice in 12D(1)** |
| Section 12D (1) – three step test | Yes | It is recommended that the three step test be removed in the Bill in 12 C and 12 D  **Recommend: Remove the test as advertised – revert to wording before the advert** | Do not recommend inclusion of treaty wording  **Recommend: Remove the test as advertised – revert to wording before the advert** |
| Section 12D(8)*(a)* – deleted as far as it is practicable | No | The name can be mentioned where it appears and where it is possible  **2022.05.17: As this is not an exception that is contained in the Act, but a new exception, it is recommended that “as far as is practicable” is included.** | Need to carefully consider consequences. Recommend that the Committee considers retaining “to the extent that it is practicable”.  **2022.05.17: As this is not an exception that is contained in the Act, but a new exception, it is recommended that “as far as is practicable” is included.** |
| Section 12D(8) – add if the name appears on the work | No | Already agreed to by Committee | |
| Section 12D(8) – substitute “to the extent justified by the purpose” with fair practice | No | There was a number of stakeholders who recommended fair practice in the Bill Fair practice does not have to be defined as it is a language and standard in copyright law and internationally recognized, included in the Berne Convention (Article 10 for quotations and illustrations for teaching) It is also in the principal Act.  2022.05.17: Berne uses both “fair practice” and “extent justified by the purpose” iro teaching  **2022.05.17: Recommend: use BOTH fair practice and extent justified by the purpose** | Recommend both “fair practice” and “extent justified by the purpose” is included as that is what is contained in the treaty  2022.05.17: Berne uses both “fair practice” and “extent justified by the purpose” iro teaching  **Recommend: use BOTH fair practice and extent justified by the purpose** |
| Section 12D(9) – moved here from 12B(1)(*b)* + delete to the extent practicable | No | The name can be mentioned where it appears and where it is possible  **2022.05.17: As the Act already has this exception and does not provide the limit iro “as far as is practicable”, recommend that it not be included in the Bill either.** | Need to carefully consider consequences. Recommend that the Committee considers retaining “to the extent that it is practicable”.  **2022.05.17: As the Act already has this exception and does not provide the limit iro “as far as is practicable”, recommend that it not be included in the Bill either.** |
| Section 12D(9) – substitute “to the extent justified by the purpose” with fair practice | No | There was a number of stakeholders who recommended fair practice in the Bill Fair practice does not have to be defined as it is a language and standard in copyright law and internationally recognized, included in the Berne Convention (Article 10 for quotations and illustrations for teaching) It is also in the principal Act.  2022.05.17: Berne uses both “fair practice” and “extent justified by the purpose” iro teaching  **2022.05.17: Recommend: use BOTH fair practice and extent justified by the purpose** | Recommend both “fair practice” and “extent justified by the purpose” is included as that is what is contained in the treaty  2022.05.17: Berne uses both “fair practice” and “extent justified by the purpose” iro teaching  **Recommend: use BOTH fair practice and extent justified by the purpose** |
| Section 12D(9) – deleted if the name appears “in” the work – only retained “on the work” | No | Already agreed to by Committee | |
| **Clause 19** |  |  |  |
| Gender neutral drafting | No | Already agreed to by Committee | |
| **Clause 20** |  |  |  |
| Section 19C(4) – may not permit a copy of the work / for commercial purposes | Yes | It is recommended that the provision be retained as is. The subsection formed part of the President’s specific reservations When reading 19C(1) together with 4 there is indeed a duplication of “for commercial purposes’  The highlighted text is already in the Bill and not an addition It was highlighted as challenging because it seemed to restrict copying for commercial and non commercial purposes but already a reservation was raised because of its potential implications /unintended consequences Whether the commercial purposes is removed or retained, the principle remains, it should not be copies for commercial purposes It should be highlighted that some stakeholders viewed this subsection as not protecting any right and that it can be abused as persons going to the cinema, so it may have other implications  **Recommend: Retain the word “commercial”** | Recommendation: The whole phrase “…but may not permit a user to make a copy or recording of the work for commercial purposes” be removed, alternatively that “for commercial purposes” be retained.  **Recommend: Retain the word “commercial”** |
| Section 19D(1) – deletion of “as may be prescribed” | No | As prescribed is necessary because there is a need to ensure the entities are authorized **Prescribed is recommended to be retained** | Recommend the phrase be retained.  **Prescribed is recommended to be retained** |
| Section 19D – inclusion of “authorized entity” in appropriate areas | No | It is recommended that the proposed language should be considered, that is amend ‘any person that serves’ to ‘any person who serves’  **Recommend: Change “that” to “who”** | Agree  **Recommend: Change “that” to “who”** |
| Section 19D(1)(b) – integrity of the work respected taking into account what is required (altered to be closer to treaty wording) | No | Already agreed to by Committee | |
| Section 19D(2)*(a)* – including “authorized entity” and adjusting the paragraph so that it reads well with this inclusion | No | Already agreed to by Committee | |
| Section 19D(3)*(a)* export / import only for distribution or to make it available to persons with a disability | Yes | **None** | **None** |
| S19D(3)*(b)* – only import / export for use by persons with a disability | Yes | It is recommended that the wording be amended to reflect the exact language in the Treaty  Other proposed wording can be considered to ensure alignment with drafting rules and other considerations  **Recommend: The wording to be amended to read as the treaty reads, or as the treaty intends. Iro proposed wording – “reason to believe” could be replaced with “reason to know” as per the treaty wording** | Proposed amendment to find a compromise – complying with legislative language but addressing the concern  19D(3)(b) “A person contemplated in paragraph (a) may not export or import an accessible format copy where such person knows, or has reason to know that the accessible format copy will be used for purposes other than to aid persons with a disability.”  If there is still discomfort, a clause stating a defence (in the wording of the treaty) may be added.  **Recommend: The wording to be amended to read as the treaty intends. Iro proposed wording – “reason to believe” could be replaced with “reason to know” as per the treaty wording.** |
| S19D(4)*(a)* - add if the name appears on the work | No | The name can be mentioned where it appears and where it is possible  **2022.05.17: Accessible format copies can in practice easily include the name of the author. Recommend that “as far as is practicable” not be included in the Bill.** | Need to carefully consider consequences. Recommend that the Committee considers retaining “to the extent that it is practicable”.  **2022.05.17: Accessible format copies can in practice easily include the name of the author. Recommend that “as far as is practicable” not be included in the Bill.** |
| S19D(4)*(b)* – accessible format copy only to be used by a person with a disability | Yes | It is recommended that the wording be deleted.  **Recommend: Section 19D(4)(b) to be deleted.** | Proposed amendment to find a compromise – complying with legislative language but addressing the concern  “19D(4)(b) use of the accessible format copy exclusively to aid persons with a disability;”  Or delete 19D(4)(b) as it is repeating the implied requirement in (3)(b).  **Recommend: Section 19D(4)(b) to be deleted.** |
| Gender neutral drafting | No | None (already agreed to by Committee) | |
| **Clause 21 + 23 + 24 + 25** |  |  | |
| Gender neutral drafting | No | None (already agreed to by Committee) | |
| **Clause 27** |  |  |  |
| Section 27(5A) – offence iro communication / making available | Yes | **Recommend: Conjunctive to be “or”** | Recommendation: At the end of Par *(a)*, the conjunctive should be “or”  **Recommend: Conjunctive to be “or”** |
| **Recommend: remove the reference to owner – the owner could have authorised another person to give authority. Necessary authority is all that is required.** | Recommend: (insertions underlined, deletions [bold]) - “Any person who at a time when copyright subsists in a work, without the necessary authority **[of the owner]** and for commercial purposes…”  **Recommend: remove the reference to owner – the owner could have authorised another person to give authority. Necessary authority is all that is required.** |
| It is recommended that the wording be retained and for commercial purposes be removed in section 27 (5A)  **Recommend: Due to the serious nature of some breaches that are not for commercial purposes, it is recommended that the offence be made applicable to infringement that are for commercial, as well as to those that are for non- commercial purposes.** | Re removal of “commercial”: Policy decision, however, this clause deals with offences, which are serious breaches. Copyright infringement (a civil matter) may be a better fit for prevention of non-commercial uses.  It could be better to use the phrase currently used in the Act (“for the purposes of trade”) here, but if this is done, it is recommended that the sections where “commercial purposes” is used, are then also accordingly amended.  **2022.05.17: Recommend: Due to the serious nature of some breaches that are not for commercial purposes, it is recommended that the offence be made applicable to infringement that are for commercial, as well as to those that are for non- commercial purposes.** |
| **Recommend: A person should have knowledge** | **Recommend the inclusion of the element of “knowing to be infringement copies”, to define the offence** |
| **2022.05.17: Considering the Cybercrimes Act specifically (only intent constitutes an offence) and offences in general (negligence rarely constitutes and offence, recommend that negligence should not be included as an offence.** | Recommend to change “which they know” to “which such person knows, or should reasonably have known” to be consistent with proposed section 27(5B)(a).  **2022.05.17: Considering the Cybercrimes Act specifically (only intent constitutes an offence) and offences in general (negligence rarely constitutes and offence, recommend that negligence should not be included as an offence. – wording can revert to “believe”** |
| **Recommendation: Paragraphs should be numbered (a) and (b) and not (eA) and (eB).** | **Recommendation: Paragraphs should be numbered (a) and (b) and not (eA) and (eB).** |
| Section 27(5B) – offence iro TPMC | Yes | **2022.05.17: Considering the Cybercrimes Act specifically (only intent constitutes an offence) and offences in general (negligence rarely constitutes and offence, recommend that negligence should not be included as an offence.** | Considering that the amendment was to bring this in line with treaties - if this is not required by the treaties, recommend that the amendment could be discarded.  Committee to decide if negligence should be a criminal offence. Recommend that only intent is retained in S27 or that the amendments be discarded as a whole.   * The wording of S28O, P and S can then also revert to “has reason to know” as it seems the public is more comfortable with that phrasing.   **2022.05.17: Considering the Cybercrimes Act specifically (only intent constitutes an offence) and offences in general (negligence rarely constitutes and offence, recommend that negligence should not be included as an offence. – wording can revert to “believe”** |
| Section 27B(5C) – offence iro copyright management information | Yes | It is recommended that the verbs in 5C to be considered  **Recommend the verbs be corrected** | Verbs in (5C)(a) and (b) should be in the singular form  **Recommend the verbs be corrected** |
| **Recommend: A person should have knowledge** | **Recommend that (5C)(b), must, like sub-section (5A), only constitute an offence where the infringing party knows that it is infringing copyright** |
| **Clause 29** |  |  |  |
| Section 28O – adding “or service” | No | Already agreed to by Committee | |
| Section 28O – change “has reason to believe” to “should reasonably have known” | No | ‘Reasonably have known’ as an objective measure was intended to strengthen the provisions - However the original wording can be retained  It is recommended that the wording in the original Bill be retained for sections 28 O and 28 S (where reasons to believe/ have known were amended)  **2022.05.17: Considering the Cybercrimes Act specifically (only intent constitutes an offence) and offences in general (negligence rarely constitutes and offence, recommend that negligence should not be included as an offence.** | Iro S27: The amendment to S28O was a consequential amendment because of S27. S27 was amended to bring offences iro TPMs in line with treaties. S27’s proposed amendments included negligence as an offence, however, the treaties do not require negligent actions to be an offence. If negligence is removed from S27, recommend that the consequential amendments to S28O be discarded.  Committee to decide if negligence should be a criminal office. Recommend that only intent is retained in S27 or that the amendments be discarded as a whole.   * The wording of S28O, P and S can then also revert to “has reason to know” as it seems the public is more comfortable with that phrasing.   **2022.05.17: Considering the Cybercrimes Act specifically (only intent constitutes an offence) and offences in general (negligence rarely constitutes and offence, recommend that negligence should not be included as an offence. If negligence is being removed from S27 (offences), recommend that the consequential amendments to S28O be discarded – wording can revert to “believe”** |
| Section 28O(6) – remove reference to Electronic Communications and Transactions Act | No | Already agreed to by Committee | |
| Section 28P(1) - remove reference to Electronic Communications and Transactions Act | No | Already agreed to by Committee | |
| Section 28P(1)*(a)* – add a reference to regulations made under the Act | No | Already agreed to by Committee | |
| Section 28S - change “has reason to believe” to “should reasonably have known” | No | ‘Reasonably have known’ as an objective measure was intended to strengthen the provisions - However the original wording can be retained  It is recommended that the wording in the original Bill be retained for sections 28 O and 28 S (where reasons to believe/ have known were amended)  **2022.05.17: Considering the Cybercrimes Act specifically (only intent constitutes an offence) and offences in general (negligence rarely constitutes and offence, recommend that negligence should not be included as an offence.** | The amendment to S28O was a consequential amendment because of S27. S27 was amended to bring offences iro Copyright Management Information in line with treaties. S27’s proposed amendments included negligence as an offence, however, the treaties do not require negligent actions to be an offence. If negligence is removed from S27, recommend that the consequential amendments to S28S be discarded.  Committee to decide if negligence should be a criminal office. Recommend that only intent is retained in S27 or that the amendments be discarded as a whole.   * The wording of S28O, P and S can then also revert to “has reason to believe” as it seems the public is more comfortable with that phrasing.   **2022.05.17: Considering the Cybercrimes Act specifically (only intent constitutes an offence) and offences in general (negligence rarely constitutes and offence, recommend that negligence should not be included as an offence. If negligence is being removed from S27, recommend that the consequential amendments to S28O be discarded – wording can revert to “believe** |
| Gender neutral drafting | No | None (already agreed to by Committee) | |
| **Clause 31** |  |  |  |
| Section 29C – corrected the subsection numbering | No | Already agreed to by Committee | |
| Section 29C: Gender neutral drafting | No | None (already agreed to by Committee) | |
| **Clause 33** |  |  |  |
| Section 39(1) – Corrected (cH) to read “28P” | No | Already agreed to by Committee | |
| Section 39(2) re regulations iro recognising entities iro persons with a disability | Yes | The regulations for authorized entities must be made – not discretionary. The Regulations will ensure the processes are provided for.  The correction of 39(Cl) is recommended for a correction, to 39(cL)  **Recommended: No changes** | The subsection does indicate “must make regulations”  There is no paragraph Cl or cL – it is cI – the capital of “i".  **Recommended: No changes** |
| Section 39(3) – consequential amendment to include the regulations in subsection (2) | No | Already agreed to by Committee | |
| **Clause 35** |  |  |  |
| Gender neutral drafting | No | None (already agreed to by Committee) | |
|  |  |  |  |
| **Proposed amendments – PPAB** | **Advertised?** | **DTIC comment** | **CLSO comment** |
| **Clause 1** |  |  |  |
| Amendment of definition of “broadcast” – to exclude “wire or” | No | **Recommendation: Retain wire** | **Recommendation: Retain wire** |
| **Clause 2** |  |  |  |
| Gender neutral drafting | No | None (already agreed to by Committee) | |
| **Clause 3** |  |  |  |
| Section 3A – distinguish between audiovisual work and sound recordings iro royalties and equitable remuneration | No | Already agreed to by Committee | |
| Gender neutral drafting | No | None (already agreed to by Committee) | |
| **Clause 4+ 5** |  |  | |
| Gender neutral drafting | No | None (already agreed to by Committee) | |
| **Clause 6** |  |  |  |
| Section 8D – added missing word “into” | No | Already agreed to by Committee | |
| **Clause 7** |  |  |  |
| Section 8E(6) – remove reference to Electronic Communications and Transactions Act | No | Already agreed to by Committee | |
| Section 8F(1) – remove reference to Electronic Communications and Transactions Act | No | Already agreed to by Committee | |
| Gender neutral drafting | No | Already agreed to by Committee | |