



23 January 2023

To: Ms Noziphiwo Dinizulu - ndinizulu@parliament.gov.za,

Cc: Ms Mahdiah Koff - mkoff@parliament.gov.za

Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour, National Council of Provinces, Parliament

Dear Ms Noziphiwo Dinizulu,

Re: Comments on the Copyright Amendment Bill [B13D-2017]

Creative Commons South Africa commend the National Assembly for passing the Copyright Amendment Bill and forwarding it to the Select Committee for further attention.

We confirm our support in general for the Copyright Amendment Bill [B13D-2017]. If passed, it will serve to improve access to knowledge and facilitate the use and sharing of teaching, research, and learning materials; enable access to persons with disabilities in alternative formats; enhance the services of libraries, archives, museums and galleries; and enable temporary copies to be made and interoperability through exceptions for computer programs.

We are pleased that the Bill, through the flexible fair use provisions and exceptions for libraries and archives, and education and academic activities, will enable the creation of and sharing of material through open source licences to increase resources for teaching and learning. It will allow scholarly authors, directly or with assistance from librarians, to deposit their manuscript versions of publications that have been funded at least 50% from the state in open access institutional repositories. This is a positive step towards increasing access to knowledge and educational resources, especially for researchers, educators, school-children and students, as well as the broader public.

The Bill will also enhance and advance current and future collaborative projects between the SA Government and the European Union and other international partners, especially relating to open science, open research and other open content initiatives.

We are pleased that open licences are mentioned a number of times in the Bill and that Section 39B(2) safeguards open licences and voluntary dedications of a work to the public domain, such as through the CC public domain dedication tool.

The South African Chapter of Creative Commons has commented previously on the Copyright Amendment Bill, most recently in both 2021 and in 2022. We have followed the passage of the Bill with keen interest, but are most concerned at the length of time that this legislative process has taken since the Bill was first published in July 2015.

The extended period in Parliament has negatively affected all stakeholders, but especially people with disabilities, libraries, as well as teaching and learning, research, and other information entities. Furthermore, the delay has impeded the development and expansion of open content programmes. It is imperative that the Amended Bill is finally passed by the National Council of Provinces and the Provincial Legislatures, and signed by the President. We are aware that draft regulations will still need to be published for comment once the Bill has been assented to, but we urge your Committee and members of the Legislatures to make all due haste.

We do not want to delay the Bill any further, but should any edits be necessary based on other submissions, then perhaps the following paragraph can be considered. Alternatively, such additions could be addressed in Draft Regulations once the Bill has been passed.

1. **Definitions** - Since this Bill intends to bring the copyright law into the 21st century, it is important to define common words in the digital space, such as **‘data’**, **‘digital’**, **‘digital rights’**, **‘digitisation’**, **‘digital curation’** and **‘digital or e-licences’** and **‘(digital) preservation’**. These words should also be mentioned in the text wherever they are relevant. Some words are not mentioned at all, such as **‘digitisation’** or **‘digital curation’**, which are missing from Section 19C. Our current copyright law only permits preservation of printed works. Digitisation is central to contemporary, digital methods of preservation. Digital curation goes beyond merely digitising material, but preserving it through conversions from old technology to new, format-shifting, secure archiving, and provision of adequate metadata so that the material is not only stored digitally in the short term, but is also responsibly stewarded to ensure access by future generations.

We would appreciate being considered for an oral presentation at any public hearings that your Committee may convene with regard to this Bill.

Yours faithfully,



Denise Nicholson
Chapter Copyright Legislation, Creative Commons South Africa Chapter
Scholarly Communications and Copyright Consultant, Scholarly Horizons

K Kure

Kathryn Kure
Chapter Representative to the Global Network Council
Creative Commons South Africa Chapter

T Schonwetter

Tobias Schonwetter
Associate Professor and the Director of the Intellectual Property Unit
Faculty of Law, University of Cape Town

N Zimmer

Niklas Zimmer
Manager: Digital Library Services, University of Cape Town
Creative Commons South Africa Chapter

C Stihler

Catherine Stihler, OBE
Chief Executive Officer, Creative Commons

PG West

Paul G. West
Chapter Lead, Creative Commons South Africa Chapter
Creative Commons South Africa Chapter

Creative Commons:

Creative Commons (CC) is a non-profit organisation with an international network devoted to educational access and expanding the range of creative works available for others to build upon legally and to share in an open environment via open source licences. CC was founded in 2001, with the generous support of the Center of the Public Domain.

The Creative Commons Global Network is the home for a community of advocates, activists, scholars, artists and users working to strengthen the Commons worldwide. Creative Commons Chapters serve as the central coordinators of the work of the individuals and institutions participating within a country in support of the Creative Commons Global Network.