





# Copyright Amendment Bill [B13D-2017]

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THE SELECT COMMITTEE ON TRADE AND INDUSTRY, ECONOMIC  
DEVELOPMENT, SMALL BUSINESS DEVELOPMENT, TOURISM, EMPLOYMENT  
AND LABOUR

PUBLIC HEARING ON THE COPYRIGHT AMENDMENT BILL

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# Creative Commons Policy: Copyright Law

Clear and strong exceptions to enable better sharing:

- Inclusive, just and equitable
- Reciprocal to rebalance the skewed world
- Sustainable

Fair Use is such an exception



# Creative Commons: A few words

Stewards of the Creative Commons Open Licence suite and tools

Enabling the “Open” into: Open Education/Science/Knowledge/Access

Efforts focus on:

- driving public policy change
- building infrastructure for open sharing and
- guiding institutions in creating, adopting, and implementing open access policies



# CC licence suite and tools: Global standard

- Free
- Easy-to-use
- Standardized legal tools
- Built on top of the copyright system –
- Make use of existing law to catch up with the online environment
- Open is not the same as free – resources are accessible with irrevocable permission for use by the public

# Open Access, Education, Science

## Benefits:

- Researchers: visibility and dissemination of research
- Funders: a better return on investment
- Scientific community and general public: democratization of knowledge by ensuring research is available to everyone:
  - Stimulates knowledge creation and sharing
  - Encourages innovation by building upon shared content
  - Inhibits the spread of dis- and misinformation by making information available to all instead of hidden behind paywalls

Covid crisis: [sharing research is the best way to do research](#)

# Why the need for open?

We know that it is hard to change knowledge sharing models, but we will need to do so if we want to:

- solve the world's most pressing challenges (e.g., climate change, pandemics)
- have an equitable model of contributing to and sharing scientific knowledge in which everyone can participate and
- ensure publicly funded knowledge is a public good accessible to all.



# Open for equitable, inclusive and resilient societies

- CC licenses a fundamental mechanism for UNESCO member states (South Africa joined in 1994) to implement:
  - 2019 UNESCO Recommendation on Open Educational Resources and
  - 2021 Recommendation on Open Science,
- Access to knowledge is a [basic human right](#) enshrined in Article 19 of the Universal Declaration of Human Rights, while:
- Article 26 guarantees the right to education for all.
- Furthermore, the United Nations Sustainable Development Goals:
  - Sustainable development knowledge
  - Global citizenship values
  - 21<sup>st</sup> century skills critical to tackling our shared challenges and
  - Promote equitable, inclusive, and resilient societies.



# Open licenses and the CAB

- Open licenses are mentioned a number of times in the CAB
- Section 39B(2) safeguards open licenses and voluntary dedications of a work to the public domain, such as through the CC public domain dedication tool CC0.
- Creative Commons supports Section 19C, which mentions that authors can deposit their manuscript versions of articles in institutional repositories, (if they are publicly funded 50% or more), without authorization. At least authors' articles can become open access, even if they cannot publish in open access journals that require high article processing charges.
- The inalienable royalties set out in sections 6A, 7A, 8A and 9A are normal in many jurisdictions and are necessary to ensure greater access to scholarly research.



# Copyright exceptions and limitations

- The CC legal tools advance global sharing, but do not establish a general sharing framework for everyone
- They cannot fully substitute for suitable laws
- Only 1% of the world's CHIs share their collections openly, due to many diverse barriers.
- Barriers in the digital environment to access, share and reuse content held in CHIs.
- Therefore a need for policy reform to copyright



# The needs for copyright policy reform

- To fill any gaps left by an open licensing “patch” to a universal, multidimensional problem.
- CHI’s concerns and needs are treated on equal footing with those of rights holders
- CC works to shape a system that’s balanced and fair for all
  - Protections must be afforded to creators in their creative works,
  - But the copyright system must uphold fundamental rights and strong user rights too

Thereby enabling everyone to contribute to building a rich, robust, vibrant, and thriving public domain, our treasure trove of creative works and knowledge that is available for all to use, that inspires us all, and upon which all creativity depends.



# Clear Exceptions and Limitations needed

- Such exceptions ensure everyone can enjoy their fundamental rights

United Nations Special Rapporteur in the field of cultural rights, Farida Shaheed. In her 2014 report on [Copyright policy and the right to science and culture](#),

- Shaheed emphasizes:
- Need for the protection of authorship and
- Need to expand opportunities for participation in cultural life.
- In addition to encouraging the use of open licenses, such as those offered by Creative Commons, the Special Rapporteur proposes to expand copyright exceptions and limitations to empower new creativity, enhance rewards to authors, increase educational opportunities, preserve space for non-commercial culture, and promote inclusion and access to cultural works.



# Fair balance

- Rights of copyright holders
- Public interest



# Copyright must not stand in the way

- Generally, [copyright](#) law should [not stand in the way of](#) CHIs' basic functions and day-to-day operations,
  - like making copies of works for preservation or
  - making available online educational, scientific and cultural materials.
- Stated otherwise, many CHIs conduct many public-interest activities that should not be subject to copyright restrictions.
- According to a 2019 World Intellectual Property Organization (WIPO) [Revised Report on Copyright Practices and Challenges of Museums](#), exceptions and limitations are not frequently well understood or used due to legal uncertainty.
- This must change, hence Creative Commons is taking part in the 43rd session of the WIPO Standing Committee on Copyright and Related Rights and is
- Supporting the proposal by the African Group to urgently develop an international legal instrument with clear rules allowing exceptions and limitations in the public interest.



# CAB a prodigious step in right direction

- Internationally, it is increasingly frequent to have:
  - Both detailed exceptions AND
  - An open ended provision, sometimes called “open norms” such as fair use.

The CC Copyright Platform working group on user rights concluded that user rights (or exceptions and limitations), including systems of fair use and fair dealing, systems of statutory exceptions and limitations, and hybrid systems, are fundamental to freedom of expression and information. The group found that a hybrid approach which combines the open endedness of fair use with statutory exceptions and limitations is possible. The countries that adopt this hybrid approach may use both fair use or fair dealing as well as additional specific exceptions and limitations, such as exceptions for libraries, archives, and museums, criticism, comment, news reporting, teaching, scholarship, and research. Several countries of common law tradition have codified more specific exceptions and limitations in their copyright acts in addition to fair use or fair dealing, while courts in some civil law countries have considered uses beyond those statutorily established as legal, as long as they fulfill certain criteria ([The global harmonization of user rights: approaches towards an international instrument.](#))



# CC supports the CAB

- To conclude, Creative Commons confirms its general support for the Copyright Amendment Bill, a complex but progressive piece of legislation that is bound to propel South Africa into the digital age and beyond. 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.
- Speaking in favor of creativity, innovation, and better sharing of knowledge and culture, Creative Commons believes that the new exceptions and limitations, including fair use but also set out in 12B, 12D, 19C and 19D are in accord with international copyright law and with practice in multiple jurisdictions. They are absolutely necessary to ensure fairness, inclusion and diversity in South African society and to drive a new era of economic, cultural and social development in South Africa.



# CC urges support of the CAB

Distinguished members of the Committee, we urge you to support the inclusion of exceptions and limitations and uphold the public domain in South African copyright law. South Africans deserve copyright rules that allow them to fully embrace the opportunities offered by digital technologies to enjoy their fundamental rights of access to knowledge and culture. No one should need to be burdened by having to abide by out-of-touch, one-sided, and unfair copyright rules. A biased copyright system favoring large industry interests guided solely by profit can only lead to the erection of more barriers, potentially slowing South Africa's economic, social and cultural development. South African society clearly has a lot to gain from a modernized copyright framework. With these final words, Creative Commons invites you to seize this unprecedented opportunity to propel [South African copyright law into the digital age and enable South African citizens to enjoy their fundamental rights to education, cultural participation, freedom of expression, and access to knowledge](#). Thank you.