**Proposed amendments**

**A PERSON WITH A DISABILITY**

**Clause 1 - Copyright**

“**‘accessible format copy’** means a copy of a work in an alternative manner or form, which gives a person with a disability access to the work, including to permit the person to have access as feasibly and comfortably as a person without a disability;”.[[1]](#footnote-1)

“**‘authorized entity’** means—[[2]](#footnote-2)

*(a)* an entity that is authorized or recognised by the government to provide education, instructional training, adaptive reading or information access to persons with a disability on a non-profit basis; or

*(b)* a government institution or non-profit organization that provides education, instructional training, adaptive reading or information access to persons with a disability as one of its primary activities or institutional obligations.”.

**Clause 20 - Copyright**

**Section 19D**

(1) Any person ~~as may be prescribed and~~ that serves persons with disabilities, including an authorised entity, may, without the authorization of the copyright owner, make an accessible format copy for the benefit of a person with a disability, supply that accessible format copy to a person with a disability by any means, including by non-commercial lending or by digital communication by wire or wireless means, and undertake any intermediate steps to achieve these objectives, if the following conditions are met:

*(a)* The person wishing to undertake any activity under this subsection must have lawful access to the copyright work or a copy of that work;

*(b)* in converting the copyright work to an accessible format copy, the integrity of the original work must be respected, taking due consideration of the changes needed to make the work accessible in that alternative format and of the accessibility needs of the persons with disability;[[3]](#footnote-3) and

*(c)* the activity under this subsection must be undertaken on a non-profit basis.

(2) *(a)* A person to whom the work is communicated by wire or wireless means as a result of an activity under subsection (1) may, without the authorization of the owner of the copyright work, reproduce the work, where that person is—

 (i) a person with a disability, for his or her personal use; or

(ii) a person that serves persons with disabilities, including an authorized entity, for personal use by a person with a disability[[4]](#footnote-4).

*(b)* The provisions of paragraph *(a)* are without prejudice to any other limitations or exceptions that the person referred to in that paragraph may enjoy.

(3) *(a)* A person with a disability or a person that serves persons with disabilities, including an authorized entity, may, without the authorization of the copyright owner export to or import from another country any legal copy of an accessible format copy of a work referred to in subsection (1), for distribution or to make it available to persons with a disability[[5]](#footnote-5), as long as such activity is undertaken on a non-profit basis by that person.

*(b)* A person contemplated in paragraph *(a)* may only so export or import where such person knows, or has reasonable grounds to believe that the accessible format copy, will only be used to aid persons with a disability.[[6]](#footnote-6)

(4) The exception created by this section is subject to—

*(a)* the obligation of indicating the source and the name of the author, if it appears on the work[[7]](#footnote-7), on any accessible format copy; and

*(b)* use of the accessible format copy exclusively by a person with a disability[[8]](#footnote-8).’’.

**Clause 33 - Copyright**

**Section 39**

New subsection (2) – current subsection (2) to become (3):[[9]](#footnote-9)

“(2)The Minister must make regulationsproviding for processes and formalities related to the authorization, or recognition, by the government of entities that provide education, instructional training, adaptive reading or information access to persons with a disability on a non-profit basis.[[10]](#footnote-10)

(3) Before making any regulations in terms of subsection (1) or (2), the Minister must publish the proposed regulations for public comment for a period of not less than 30 days.’’.

**BROADCAST**

**Clause 1 - Copyright**

“**‘broadcast’** means—

*(a)* transmission, partially or wholly, by wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof;

*(b)* transmission, partially or wholly, by satellite; or

*(c)* transmission, partially or wholly, of encrypted signals if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;”.[[11]](#footnote-11)

**Clause 1 - PPAB**

‘‘ **‘broadcast’** means—

*(a)* transmission, partially or wholly, by ~~wire or~~ wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof;

*(b)* transmission, partially or wholly, by satellite; or

*(c)* transmission, partially or wholly, of encrypted signals if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;’’;

**PERSONAL COPIES**

**Clause 1 – Copyright**

“**‘lawfully acquired’** means a copy which has been purchased, obtained by way of a gift, or acquired by means of a download resulting from a purchase or a gift and does not include a copy which has been borrowed, rented, broadcast or streamed, or a copy which has been obtained by means of a download enabling no more than temporary access to the copy;”.[[12]](#footnote-12)

**Clause 13 - Copyright**

**12B(1)*(i):***

“*(i)* the making of a personal copy of such work by a natural person for their personal use, including the use of a lawful copy of the work at a different time or with a different device[[13]](#footnote-13) owned by that natural person[[14]](#footnote-14), and made for ends which are not commercial: Provided that the work was lawfully acquired and that such personal use shall be compatible with fair practice[[15]](#footnote-15).”.

And changing 12B(2) (now (3)) as follows:

(3) *(a)* For the purposes of subsection (1)*(i)* permitted personal use include—

(i) the making of a back-up copy;

(ii) time or format-shifting; or

(iii) the making of a copy for the purposes of storage, which storage may

include storage in an electronic storage medium or facility accessed by the individual who stored the copy or the person responsible for the storage medium or facility.

*(b)* The factors associated with making a personal copy, set out in subsection (1)*(i),* do not apply to a copy made in terms of another exception provided for in this Act.[[16]](#footnote-16)

**TPMS**

**Clause 1 - Copyright**

“**‘technological protection measure’** means any process, treatment, mechanism, technology, device, product, system or component that in the normal course of its operation is designed to prevent or restrict the infringement of copyright in a work;[[17]](#footnote-17)

“**‘technological protection measure circumvention device or service’** means a device or service—

*(a)* primarily designed, produced or adapted for purposes of enabling or facilitating the circumvention of a technological protection measure;

*(b)* promoted, advertised or marketed for the purpose of circumvention of a technological protection measure; or

*(c)* with a limited commercially significant purpose or use other than to circumvent a technological protection measure;[[18]](#footnote-18)”; and”.

**Clause 29 - Copyright[[19]](#footnote-19)**

**S28O**

**28O.** (1) No person may make, import, sell, distribute, let for hire, offer or expose for sale, hire or advertise for sale a technological protection measure circumvention device or service if such a person knows, or ~~has reason to believe~~ should reasonably have known[[20]](#footnote-20), that it will or is likely to be used to infringe copyright in a technologically protected work.

(2) No person may provide a service to any other person if—

*(a)* such other person intends to use the service to circumvent an effective technological protection measure; or

*(b)* such person knows, or ~~has reason to believe~~ should reasonably have known, that the service will or is likely to be used by another person to infringe copyright in a technologically protected work.

~~(6) The provisions of this section must be read together with the provisions of sections 86, 87 and 88 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).~~[[21]](#footnote-21)

**S28P**

**28P.** (1) ~~For the purposes of this Act and of section 86 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002),~~ Nothing in this Act shall prevent any person from using a technological protection measure circumvention device or service to perform any of the following:

*(a)* An act permitted in terms of any exception provided for in, or prescribed under, this Act; or

*(b)* the sale, offer to sell, procurement for use, design, adaptation for use, distribution or possession of any device or data, including a computer program or a component, which is designed primarily to overcome security measures for the protection of data in order to enable the performance of any act permitted in terms of paragraph *(a)*.

**28S.** The prohibition in section 28R does not apply if a person—

*(a)* is authorized by the performer or copyright owner to remove or modify the copyright management information;

*(b)* does not know, ~~and has no reason to believe~~ or could reasonably not have known, that the removal or modification of the copyright management information will induce, enable, facilitate or conceal an infringement of the copyright in the work; or

*(c)* does not know, or ~~has no reason to believe~~ could reasonably not have known, that the copyright management information has been removed or modified without the authority of the performer or copyright owner.’’.

**EXTENDING DIGITAL RIGHTS TO PUBLISHED EDITIONS AND COMPUTER PROGRAMMES**

**New clause**

*Amending sections 11A and 11B*

**Section 11A[[22]](#footnote-22)**

**11A.** Copyright in a published edition vests the exclusive right to make or to authorize the doing of any of the following acts in the Republic:

*(a)* **[making]** Makingof a reproduction of the edition in any manner;

*(b)* communicating the work to the public by wire or wireless means;

*(c)* making the work available to the public by wire or wireless means, so that any member of the public may access the work from a place and at a time chosen by that person; and

*(d)* distributing the original or a copy of the work to the public.

**Section 11B**

**11B.** Copyright in a computer program vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

*(a)* Reproducing the computer program in any manner or form;

*(b)* publishing the computer program if it was hitherto unpublished;

*(c)* performing the computer program in public;

*(d)* broadcasting the computer program;

*(d*A*)* communicating the work to the public by wire or wireless means;

*(d*B*)* making the work available to the public by wire or wireless means, so that any member of the public may access the work from a place and at a time chosen by that person;

*(d*C) distributing the original or a copy of the work to the public;

*(e)* causing the computer program to be transmitted in a diffusion services, unless such service transmits a lawful broadcast, including the computer program, and is operated by the original broadcaster;

*(f)* making an adaptation of the computer program;

*(g)* doing, in relation to an adaptation of a computer program, any of the acts specified in relation to the computer program in paragraphs *(a)* to *(f)* inclusive; and

*(h)* letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the computer program.’’.

**OFFENSES FOR TPMS AND DIGITAL RIGHTS**

**Clause 27*(a)***

**Section 27**

**New (5A)** **in respect of digital rights**

(5A) Any person who at a time when copyright subsists in a work, without the authority of the owner of the copyright and for commercial purposes—

 *(e*A*)* communicates the work to the public by wire or wireless means; and

*(e*B*)* makes the work available to the public by wire or wireless means, so that any member of the public may access the work from a place and at a time chosen by that person,

which he or she knows to be infringing copyright in the work, shall be guilty of an offence.

**Subsection (5A) to be (5B) and a new (5C)**

 (5B) Subject to section 28P[[23]](#footnote-23), any person who, at the time when copyright subsists in a work that is protected by a technological protection measure applied by the author or owner of the copyright—

*(a)* makes, imports, sells, distributes, lets for hire, offers or exposes for sale or hire or advertises for sale or hire, a technological protection measure circumvention device or service if—

(i) such person knows, or ~~has reason to believe~~ should reasonably have known, that that device or service will or is likely to be used to infringe copyright in a work protected by an effective[[24]](#footnote-24) technological protection measure;

(ii) such person provides a service to another person to enable or assist such other person to circumvent an effective technological protection measure; or

(iii) such person knows, or ~~has reason to believe~~ should reasonably have known, that the service contemplated in subparagraph (ii) will or is likely to be used by another person to infringe copyright in a work protected by an effective technological protection measure;

*(b)* publishes information enabling or assisting any other person to circumvent an effective technological protection measure with the intention of inciting that other person to unlawfully circumvent an effective technological protection measure in the Republic; or

*(c)* circumvents such an effective technological protection measure when he or she is not authorized to do so,

shall be guilty of an offence ~~and shall upon conviction be liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment[[25]](#footnote-25)~~.

(5C) Subject to section 28S[[26]](#footnote-26), any person who—

*(a)* in respect of any copy of a work, remove or modify any copyright management information; or

*(b)* make, import, sell, let for hire, offer or expose for sale, advertise for sale or hire or communicate to the public a work or a copy of a work, if the copyright management information in respect of that work or copy of that work, has been removed or modified without the authority of the copyright owner,

shall be guilty of an offence.

**MAKING THE FAIR USE FACTORS APPLICABLE TO OTHER EXCEPTIONS**

**Clause 13**

**12A*(d)* – New paragraph**

 “*(d)* The exceptions authorized by this Act in sections 12B, 12C, 12D, 19B and 19C[[27]](#footnote-27), in respect of a work or the performance of that work are subject to the principle of fair use, determined by the factors contemplated in paragraph *(b)*.”.

**EPHEMERAL RIGHTS**

**Clause 13**

**12B(1)*(c):* (now to be paragraph *(b)* as *(b)* has been moved to 12D as (9)) – Canadian Act wording**

“*(b)* fixation or reproduction by a broadcaster of a performer’s performance or work, other than a cinematographic work, that is performed live, or a sound recording that is performed at the same time as the performer’s performance or work: Provided that the broadcaster—

(i) is authorized to communicate the performer’s performance, work or sound recording to the public by telecommunication;

(ii) makes the fixation or the reproduction itself, for its own broadcasts;

(iii) does not synchronize the fixation or reproduction with all or part of another recording, or other performer’s performance or work;

(iv) does not cause the fixation or reproduction to be used in an advertisement intended to sell or promote, as the case may be, a product, service, cause or institution;

(v) records the dates of the making and destruction of all fixations and reproductions and any other prescribed information about the fixation or reproduction: Provided that the broadcaster shall keep the record current and shall make the record available to owners of copyright in the works, sound recordings or performer’s performances, or their representatives, within twenty-four hours after receiving such a request;

(vi) destroys the fixation or reproduction within thirty days after making it, unless the fixation or reproduction is deposited in an archive in accordance with subparagraph (vii), or where the copyright owner authorizes the retention thereof, which authorization may be subject to the payment of applicable royalties; and

(vii) is authorized to, with the consent of an official archive, deposit the fixation or reproduction in that official archive where the broadcaster considers that fixation or reproduction to be of an exceptional documentary character: Provided that the broadcaster shall, within thirty days of such deposit, notify the copyright owner thereof;”

**And a new subsection (2)**

“(2) Subsection (1)*(b)* does not apply where a licence is available from a collective society to make the fixation or reproduction of the performer’s performance, work or sound recording.”

**ADDING THE WORDING OF THE THREE STEP TEST**

**Clause 13**

**Section 12C**

“**12C.** (1) Any person may make transient or incidental copies or adaptations of a work, including reformatting, where such copies or adaptations are an integral and essential part of a technical process and the purpose of those copies or adaptations is—

*(a)* to enable the transmission of the work in a network between third parties by an intermediary or any other lawful use of the work; or

*(b)* to adapt the work to allow use on different technological devices, such as mobile devices,

as long as there is no commercial significance to these acts.

(2) Transient or incidental copies or adaptations of a work contemplated in subsection (1), may—

*(a)* only be made in the cases stipulated in subsection (1);

*(b)* not conflict with the normal exploitation of the copyright work; and

*(c)* not unreasonably prejudice the legitimate interests of the copyright owner flowing from their copyright in that work.”.[[28]](#footnote-28)

**Section 12D**

“(1) Subject to subsection (3), a person may make a reproduction of a work, including the use of a lawful copy of the work at a different time or with a different device owned by that person, or may broadcast it, for the purposes of educational and academic activities: Provided that—

1. the extent of the reproduction or the portion of the broadcast shall be compatible with fair practice;
2. a reproduction may only be made in the cases stipulated in this section;
3. the reproduction does not conflict with the normal exploitation of the copyright work; and
4. the reproduction does not unreasonably prejudice the legitimate interests of the copyright owner flowing from their copyright in that work.[[29]](#footnote-29)

(8) *(a)* The source of the work reproduced and the name of the author, if it appears on the work, shall be indicated on all copies contemplated in subsections (1) to (6).

*(b)* The use of the work as contemplated in subsections (1) to (6) shall be compatible with fair practice;’’.

(9) Copyright in a work shall not be infringed by any illustration in a publication, broadcast, sound or visual record for the purpose of teaching: Provided that such use shall be compatible with fair practice: Provided further that the source and the name of the author, if it appears on ~~or in~~ the work, shall be mentioned in the act of teaching or in the illustration in question.”.

**REMOVAL OF DUPLICATION – ADVERTISEMENT RECOMMENDED**

**Clause 20**

**Section 19C**

(4) A library, archive, museum or gallery may, for educational or research purposes, permit a user to view a whole audiovisual work, listen to a full digital video disc, compact disc or other sound recording or musical work on its premises, in an institutional classroom or lecture theatre, or view such work or listen to such digital video disc, compact disc or other sound recording or musical work by means of a secure computer network, without permission from copyright owners, but may not permit a user to make a copy or recording of the work[[30]](#footnote-30) ~~for commercial purpose~~.

**RETROSPECTIVE CLAUSES AND DELEGATIONS TO MINISTER**

**(FROM FIRST DISCUSSIONS ON THE PRESIDENT’S RESERVATIONS)**

**Clause 5** (Retrospective clause and re delegations to Minister)

1. On page 5, from line 50, to omit subsection (7)*(a)* and *(b)*(i) and (ii).

2. On page 6, from line 1, to omit subsection (7)*(b)*(iii)and *(c)*.

**Clause 7** (Retrospective clause and re delegations to Minister)

1. On page 7, from line 8, to omit subsection (7)*(a)*, *(b)* and *(c)*.

**Clause 9** (Retrospective clause and re delegations to Minister)

1. On page 9, from line 48, to omit subsection (5)*(a)* and *(b)*.

2. On page 10, from line 1, to omit the continuation of subsection (5)*(b)*(iii) and subsection (5)*(c)*.

**REMOVING DUPLICATION, CHANGING WORDING TO BE MORE SIMILAR TO TREATY WORDING / S12(4) OF THE ACT (IN RESPECT OF MORAL RIGHTS)**

**Clause 13**

**Section 12A**

**12A*(a)*(i):** On page 12, from line 10, to omit subparagraph (i).

**12A*(a)*(iv):** On page 12, from line 14, to omit subparagraph (iv).

**12A*(a)*(vi):** On page 12, from line 17, to omit subparagraph (vi).

**12A*(c)*:**

*(c)* For the purposes of paragraphs *(a)* and *(b)* the source, as well as the name of the author, shall be mentioned, if it appears on the work.”.

**Section 12B**

**12B(1)*(a)*(i):**

“(i) the extent thereof shall be compatible with fair practice; and”.

**12B(1)(*a)*(ii):**

(ii) ~~to the extent that it is practicable,~~ the source and the name of the author, if it appears on ~~or in~~ the work, shall be mentioned in the quotation;

**12B(1)*(b)* (move to 12D(9)):** On page 12, from line 44, to omit paragraph *(b)*.

**12B(1)*(d):***

 *(d)* the reproduction in the press or by broadcasting of a lecture, address or other work of a similar nature which is delivered in public, if such reproduction or broadcast is for information purposes: Provided that the source and the name of the author should be indicated, if it appears on the work, and that the author of the lecture, address or other work so reproduced shall have the exclusive right of making a collection thereof;

**12B(1)*(e):***

*(e)* subject to the obligation to indicate the source and the name of the author, if it appears on the work—

**12B(1)*(e)*(i):** On page 13, from line 13, to omit subparagraph (i).

**12B(1)*(e)*(ii) and (iii):**

“(ii) the reporting of current events, or the reproduction and the broadcasting or communication to the public of excerpts of a work seen or heard in the course of those events, which reporting, reproduction, broadcasting or communication shall be compatible with fair practice; or

(iii) for purposes of providing current information, the reproduction in a newspaper or periodical, or the broadcasting or communication to the public, of a lecture, address, or sermon or other work of a similar nature delivered in public, which reproduction, broadcasting or communication shall be compatible with fair practice;”.[[31]](#footnote-31)

**12B(1)*(f)*(ii)**

“*(f)* the translation of such work: Provided that such translation is—

(i) done for non-commercial purposes;

(ii) used for personal, educational, teaching, judicial proceedings, research, for the furtherance of language and culture, or professional advice purposes only: Provided that such use shall be compatible with fair practice; or

(iii) communicated to the public for non-commercial purposes.”.

**AMEND WORDING TO ACCORD WITH TREATY WORDING**

**Clause 3 - PPAB**

**Section 3A**

“(3) The written agreement contemplated in subsection (2)—

*(b)* must set out the—

(i) royalties or equitable remuneration in respect of audiovisual works; and

(ii) equitable remuneration in respect of sound recordings,

due and payable to the performer for any use of the fixation of the performance;”.

**TECHNICAL AMENDMENTS**

**Clause 33 - Copyright**

**Section 39(1)**

“*(*cH*)* prescribing permitted acts for circumvention of technological protection measures contemplated in section 28P after due consideration of the following factors:”

**Clause 6 - PPAB**

**Section 8D**

‘‘(3) The Minister must make regulations prescribing compulsory and standard contractual terms to be included in agreements to be entered into in terms of this Act, which contractual terms must include—

**Clause 7 (following from the technical amendments made to 28O and 28P) - PPAB**

**Section 8E**

~~(6) The provisions of this section must be read together with the provisions of sections 86, 87 and 88 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).~~

**Section 8F**

**8F.** (1) ~~For the purposes of this Act and of section 86 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002),~~ Nothing in this Act shall prevent any person from using a technological protection measure circumvention device applied to an audiovisual fixation or sound recording to perform any of the following:

1. Amended to align with treaty wording [↑](#footnote-ref-1)
2. Amended to align with treaty wording [↑](#footnote-ref-2)
3. Amending (b) to accord with the treaty definition of “accessible format copy” – as this is substantive we cannot add it to the definition, it must be added to 19D. 19D(1)(b) did provide for this concept, but the wording was very different. This amendment copies the wording of the treaty – but adapted for the structure of, and definitions used in, the Bill. [↑](#footnote-ref-3)
4. To align with the treaty wording – it was not clear who the accessible format copy is for. [↑](#footnote-ref-4)
5. Aligning with treaty wording. [↑](#footnote-ref-5)
6. Aligning with treaty wording. [↑](#footnote-ref-6)
7. Related to moral rights in respect of exceptions – amendments were recommended throughout the Bill to use the wording of Section 12(4) of the Act. [↑](#footnote-ref-7)
8. To align with treaty wording. [↑](#footnote-ref-8)
9. This amendment is to provide that the Minister may prescribe processes and formalities for “authorised entities” to be recognised - the definition speaks of what “authorised entities” are, but not how that happens. We need to put this as a separate subsection as subsection (1) provides for discretionary regulations only and these processes must be prescribed. [↑](#footnote-ref-9)
10. Need to advertise this new subsection. [↑](#footnote-ref-10)
11. There are questions about recent broadcast developments and about “wired” broadcasts. Also see Cl 4, 6, 10 re communicating by work. Public requested that wire be removed – but there may be examples of wired broadcasts. Committee to decide. [↑](#footnote-ref-11)
12. There are concerns about unintended consequences with this definition. We have excluded copies made under other exceptions - see the new S12B(3)*(b)* – these are not of concern anymore. Perzanowski and Schultz in a 2012 article titled “Copyright Exhaustion and the Personal Use Dilemma” explains that “To reflect both text and legislative intent, courts must have some leeway to provide common law—and common sense— interpretations that fill the gaps in the statutory text. However, we worry that narrowing the scope of exclusive rights in order to exclude personal uses could unintentionally tie courts’ hands in future cases, preventing them from addressing subtle differences between uses deemed lawful today and those that may arise in the future.” There are other countries who simply add “lawfully acquired” to the text of the Act and do not define the phrase – giving the courts leeway. There are many limitations already contained in *(i),* and it is now also expressly made subject to the 4 fair use factors. To exclude the definition could thus still provide sufficient protection, without unintentionally stifling the hands of the courts on subtle differences. [↑](#footnote-ref-12)
13. Consequential amendment because of removing duplications in 12A. [↑](#footnote-ref-13)
14. To align the wording with the treaties. [↑](#footnote-ref-14)
15. Aligning words – removing “extent justified by the purpose” and replacing it with “fair practice” throughout. [↑](#footnote-ref-15)
16. This removes the other exceptions from the ambit of 12B(1)(i). Recommended for advertisement. [↑](#footnote-ref-16)
17. There are concerns about unintended consequences about the amendment of this definition, including the deletion of paragraph *(b)* – the definition of TPM / TPMCD could result in actions, which should be allowed (exceptions), being prevented. It is recommended that this definition be advertised due to the removal of paragraph *(b)*. [↑](#footnote-ref-17)
18. *(b)* and *(c)* are to align the wording with treaty wording. [↑](#footnote-ref-18)
19. The amendments to clause 29 need not be advertised. [↑](#footnote-ref-19)
20. Because we are referring to this wording in section 27, which provides for offences, it is recommended that a more objective test is used than “has reason to believe”, which is very subjective and may cause difficulty in proving the offense or the defense. This is done in S28O and S. [↑](#footnote-ref-20)
21. This, and the deletion in 28P(1) (following page) are technical amendments and need not be advertised. [↑](#footnote-ref-21)
22. We are not extending these rights to Broadcasting - rights in respect of broadcasts are still being negotiated. [↑](#footnote-ref-22)
23. This section 28P provides exceptions to the TPM rights. So if you can rely on an exception, you would not have committed an offence. [↑](#footnote-ref-23)
24. Wording of 28O copied. See 28O(5) for a definition of what is an effective TPM. [↑](#footnote-ref-24)
25. This is covered by S27(6). [↑](#footnote-ref-25)
26. Section 28S gives the exceptions. So if you have a defense as set out in 28S, you did not commit an offence. [↑](#footnote-ref-26)
27. 2021.11.18: Not 19D – as Marrakesh is actually allowing this exception. It is not to be tested against fair use. It is an exception on its own, speaking to a specific treaty. [↑](#footnote-ref-27)
28. (2) is a proposal for incorporation of the three step test. [↑](#footnote-ref-28)
29. *(b) to (d)* are a proposal for incorporation of the three step test. See 2013: The Three-Step Test Revisited: How to Use the Test’s Flexibility in National Copyright Law Christophe Geiger, Daniel Gervais, and Martin Senftleben: “WIPO Doc. CRNR/DC/4, § 12.09. - …when a high level of protection is proposed, there is reason to balance such protection against other important values in society. Among these values are the interests of education, scientific research, the need of the general public for information to be available in libraries and the interests of persons with a handicap that prevents them from using ordinary sources of information.” [↑](#footnote-ref-29)
30. Concern is – the duplication is that an exception may not be allowed for commercial purposes as that is covered by subsection (1). If the whole phrase is removed, a copy for non commercial purposes may be allowed if this is done under Section 12D(1) for example. If we retain “but may not permit a user to make a copy or recording of the work”, this would be a prohibition in respect of both commercial and non commercial purposes and changes the content. May need inputs from the public if we retain this phrase. [↑](#footnote-ref-30)
31. purpose moved from the end to the start of (iii) [↑](#footnote-ref-31)