



OPEN LETTER REGARDING COPYRIGHT REFORM ON BEHALF OF SOUTH AFRICAN AUTHORS

25 September 2023

This letter is on behalf of the South African authors listed below, who write in support of the long overdue Copyright Amendment Bill, B13D-2017.

In South Africa and all around the world, authors have long been told that our interests are the central focus of copyright law. In reality, the law has seldom taken the full range of authors' interests into account. And, in recent years, the interests of authors have often been conflated with those who financially dominate the creative and online industries, including some of the largest corporate publishers, film and media conglomerates, and technology companies. Their views, which include substantial opposition to key provisions of this Bill, do not represent ours.

Authors write because we want to be read. We want our work to engage, to enlighten, to spark new ideas and new creations. We want others to learn from and build upon our ideas. While we cannot pretend to speak for all South African authors, for a sizeable number of us these goals are our highest priority. We believe they are best achieved with a copyright law that takes seriously constitutional rights such as access to education, free expression, and the right to equality (including the protection for persons with disabilities), while also proactively protecting the rights of those who actually create new works of literature or research.

The Copyright Amendment Bill accomplishes these goals. The Bill's fair use provision is perhaps the most important feature, which is a flexible limitation on copyright that balances the rights of copyright holders with those of users. Fair use fosters creativity and learning by allowing authors to engage lawfully with existing work to create new, transformative works such as parodies, mashups, and remixes. It supports research by giving scholars freedom to reuse and recontextualise existing works to make new arguments and to enable computational analysis. Fair use also supports education by giving instructors reasonable flexibility to reuse works in the classroom and online in ways that existing law makes impossible. Fair use also gives librarians the flexibility they need to ensure that the collections are preserved and made available to readers long into the future, and that all readers – including those with a disability – can gain access. Experience from numerous other nations that have implemented fair use show that it is consistent with international law, predictable and fair for copyright holders and users, and it should be

enacted. Confirmation received recently from six countries that have fair use in their copyright law shows that fair use has not negatively affected authors and creators or their creative industries. On the contrary, fair use has proved to be progressive and positive for stakeholders.

The Bill also would make South Africa a leader in protecting the rights of authors, making this Copyright Amendment Bill one of the few worldwide that would directly address the historical imbalance of power that authors have faced. The Bill's fair remuneration provisions are an innovative way to ensure that authors – many of whom lack bargaining power or sophisticated legal expertise when signing publishing contracts with multinational oligopolies – are fairly compensated for future uses of their works.

The Bill's reversion provisions similarly address the challenge that authors face in maintaining a say in how their works are made available to the world. This is particularly important for authors who care about their intellectual legacy, which is often of little interest to publishers after their works fade from commercial viability. The reversion provision provides a straightforward, automatic method for authors to regain rights in literary or musical works after 25 years, allowing authors to reinvigorate those works with new life, or renegotiate with rightsholders, should they wish to. Similarly, provisions in the Bill for unenforceable contracts, similar to those in the EU Directive and the copyright law of Singapore, will help protect authors from being pressured into signing restrictive contracts that override their rights or any exceptions in the Bill.

The Bill needs to be passed by Parliament and signed by the President as a matter of urgency.

Sincerely,

Dave Hansen
Executive Director
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On behalf of¹

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