

**20th MEETING NOTES OF THE
CREATIVE COMMONS SOUTH AFRICA CHAPTER**

DATE: **Tuesday, 12 November 2024** @ 15:00 SAST/CAT (13:00 UTC) (Central African Time)
13:00 UTC

LOCATION: Google Meet

Video call link: <https://meet.google.com/gbf-mycw-gui>

Or dial: (ZA) +27 10 823 0958 PIN: 543 836 410#

Note: Please mute your mic when you are not speaking

- Welcome: Paul West
- Apologies: Glenda Cox, Michelle Willmers,
- Participants:
 - Kathryn Kure (CCSA)
 - Paul G. West (CCSA)
 - Thomas King (CILT - UCT)
 - Brigitte Vezina (CCHQ, Director of Policy)
 - Derek Moore (Web Learning)
 - Thandekile Ngema (SITA)
 - Denise Nicholson (CCSA)
 - Douglas Ian Scott (WMZA)
 - Lena Nyahodza (UCT)
- Review of the agenda - the agenda was agreed upon by the participants
- Notes from the previous meeting were circulated, and people could edit. These are not formal minutes but a record of what transpired.
 - Meeting notes were circulated - [19th CC SA NOTES](#)
- Volunteering of a notetaker: Kathryn Kure
 - Anyone else can please help edit these notes; they are not minutes per se but a record of the discussion
- Note the Strategy, Charter, Chapter Guidelines, and Codes of Conduct
 - The [Creative Commons Strategy](#)

No form of hostility, rudeness, harassment or abuse will be tolerated.

- Chapter roles
 - The following [two official roles](#) for the period October 2023 to October 2024 for the South African Chapter are:
 - South Africa Chapter Lead: [Kathryn Kure](#).
 - Representative to the Global Network Council: [Paul West](#).
 - Additional volunteers
 - Volunteer: **Copyright Amendment Bill** (CAB). Denise Nicholson and Douglas Ian Scott (via Wikimedia South Africa) and support for monitoring South African CAB. -
 - Volunteer: Chapter Governance and Ethics: **Kathryn Kure**

- **Niklas Zimmer:** communication and newsletters
- **Discussion on the work of Chapters** (main content of this meeting)
Please note that all work mentioned is by individual members and their organisations and not by any “central office”.

The Chapter has no office, budget, staff or physical address. All volunteers are unpaid.

AGENDA:

Chapter Lead and Representative to the Global Network Council. It is the end of the year and time to throw open the roles to anyone within the memberships. Paul asked if anyone wanted to step up to the plate. Derek said he thought they were doing a great job. If anyone does want to volunteer, it remains open for people to volunteer.

Brigitte Vézina from CC to present the TAROCH Coalition

Creative Commons Launches TAROCH Coalition for Open Access to Cultural Heritage

Brigitte Vézina thanked CCSA for the invitation to speak. Brigitte works at CC and is Director of Policy and Open Culture. CCSA is deeply grateful to her for stepping up to the plate and both preparing and delivering the  CAB CC HQ Write Up Fair Use 14 March 2023.pdf to the Parliamentary Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour as part of the Public Hearings on the Performers Protection and Copyright Amendment Bills, on 14 March 2023. Given the time constraints for the presentation a shortened version of the above in a presentation format required by the committee is found here:

 CAB CC HQ Presentation to Parliament 14 March 2023 with annotations.pdf

Background: Brigitte had reached out to CCSA asking if they were prepared to join the [TAROCH Coalition](#) which has recently been formalised from a loose association into an actual coalition, and which she is driving. KK therefore invited her to the CCSA meeting so that she could engage directly with the community around this venture. TAROCH has as its aim the creation of a UNESCO Recommendation on Open Culture Heritage to be voted upon by all the member states. South Africa is a UNESCO member. The coalition is community-led and the main aim is to encourage the member states of UNESCO to adopt a new recommendation to recognise open access to heritage. So it is along the model of the Open Science and the OER recommendation. Brigitte stressed that there is a need for a recommendation on Open Heritage to enable fair and more equitable access to cultural heritage, facilitate intercultural dialogues and build more connected, resilient and sustainable societies.

CC is at the helm of this activity, starting with two meetings in Lisbon. The first was in April 2024 which was a round-table hearing about appetite in the community and the second in May 2024 had as its aim the identification of what is needed and sketching out the road-map for the final presentation to UNESCO, and accordingly included representatives from UNESCO. Although CC is at the helm and providing funding for the initiative, this is really meant to be a community-led initiative, which started off as a loose community including lots of people from Open Culture open culture but it is not being formalised as a coalition by means of a very simple form for organisations to fill in. The main thing to bear in mind is we are looking for

organisations and institutions not individuals who are wanting to foster open access to cultural heritage. The report on the May meeting is found here: [Lisbon Strategic Workshop Report](#)

Currently, a total of 23 organisations from the initial call have responded and joined; these can be seen on the blog post provided above. They are a good representation of the institutions involved and the coalition is accepting applications on a rolling basis but it is up to each and every single organisation or CC country branch to decide to join the coalition or not.

It was determined that the coalition would work within the existing legislative landscape at UNESCO, which is already quite crowded. Currently, there are pending Recommendations on Ethics of AI, on Museums, on aspects of digitisation, and others. So the first criterion was ensuring that the coalition would work with a gap, rather than an overlap, and it was determined that there is no UNESCO instrument that lays out the importance of open access to heritage in the public domain.

In terms of defining the terms of the recommendation tightly, this is not a debate about what culture is, but the entire focus is on cultural heritage that is already in the public domain, legally. As a result, all the questions of copyright around artists' rights and so on are moot, as the narrow focus is purely upon those artefacts which are already in the public domain. CC has funding from [Arcadia](#) until 2026, however it is noted that in terms of the cluttered agenda it will be impossible to get space on the agenda at UNESCO until December 2029, so Brigitte is hoping there will be another push for extra funding to get through to November 2029.

Two main deliverables until May 2026 are:

1. A Civil society statement on open access to cultural heritage in the public domain. Brigitte stressed that they want to use something like the Cape Town Declaration on Open Education. That is a model - and a starting point in terms of thinking about the issues and how to draft it.
2. An advocacy strategy and materials to support the statement itself - to support the creation of a network of open ambassadors to do the advocacy at the grassroots on the ground to build awareness and support since UNESCO is an intergovernmental organisation so they need the support of every single member state who is going to sign onto the statement for unanimity to occur. They want to equip the local ambassadors with the right information.

From UNESCO's perspective, the main issue is that it needs to be aligned with their agenda and focus. Brigitte stressed that for organisations which join, being part of the coalition is not a huge lift, with representatives needing to attend meetings around every two months. The very heavy lifting happens within two workspaces with about 10 members each that will do the hard work and have already started on that work. She is hoping that these two workspaces can progress the work - and then empower the local ambassadors to do more on-the-ground advocacy.

For further information, you can look at the report on the workshop in May linked above. Brigitte indicated that two CC country chapters have joined - Rwanda and Italy - and some Wikimedia branches too. The floor was then opened for questions and comments.

Questions and Comments: TAROCH.

Kathryn raised concerns about the representativeness of the working group which is very much derived from people from the Global North. Admittedly, Lisbon is far to travel to from the Global South but from the report, the first two workshops did not appear actively to seek engagement with those from the Global South, and increasingly, post-Covid, we in the Global South feel the gap is widening, rather than decreasing.

A second issue she raised is that with the ongoing humanitarian crisis in Palestine, and precipitated by that there is backlash against UNESCO and other institutions being raised on university campuses specifically, questioning both its role and the lack of representation in relation to the Global South, and she indicated she would share with Brigitte an example of an increased questioning on university campuses as to the role of UNESCO and other institutions in the Global South.

Brigitte indicated that this kind of feedback is useful as it will help the working groups to gauge what the likely issues that will be raised by the various member states are.

Derek asked Brigitte to elaborate on what the differences are between culture/heritage and access to books for instance. He noted it was only written in English so only one system of thought - do we have other languages/cultures on board and that copyright barriers are not the same between countries. Brigitte indicated it was the kind of works - sculpture, tapestries, art, that you would typically find in GLAM institutions, but not necessarily only those - they are also looking at less formalised cultural artefacts.

Kathryn asked what the "Civil Society Declaration" was to consist of - what are the mechanics of operation there, which organisations would be represented, how could they even be representative if they are but a small portion of the world's CSOs. Brigitte indicated it would be a statement made (presumably by those in the TAROCH Coalition) so a less formalised process?

Brigitte emphasised that there is a lot of cultural heritage within the public domain that is behind barriers and that some museums claim copyright over public domain works. We are seeing all sorts of barriers around the public domain which are unfair and affect everyone. And are there boundaries to access such works.

Douglas indicated that Wikimedia very strongly supports the CC stance that these heritage items remain in the public domain and that Wikimedia Commons can only publish if works are either CC BY or CC BY SA or CC 0, or PD which means then that the free knowledge community can share these for works and that it can be a truly public common. As a result, he wholeheartedly supports the endeavour.

Brigitte indicated that the trustworthiness of the information is critical and that citizens must be empowered by their own cultural heritages to participate in public debate and discourse. If you block access to some of the past, you are able to project a different reality into the present and that wide access to heritage materials is a critical right.

She also emphasised that they are looking to what is already in the public domain and to what is already digitised. That is the focus of the recommendation. Also, to ensure it is more inclusive - they are trying not only to focus on GLAM but also community archives and so on.

Paul West said that in Africa a lot of physical objects are being destroyed and that there is a need to try and digitally record physical artefacts that would probably help ensure that these exist at least digitally.

Douglas stated that there are those involved in 3D scanning and it is worth noting that UCT does scan 3D heritage sites in very high resolution. You can access through them the other folks doing it around the world - tombs and so on - there is a whole ecosystem of people doing this - and the group is thinking about releasing under a CC licence - they are already doing it for public benefit. One person did the CC course - so he is thinking of it - to get the journey started.

Kathryn remembered that someone did a huge project using LIDAR for the rock paintings in the Drakensberg and will try to follow up on it.

After all the discussion, Kathryn stated that the process for CCSA to join the TAROCH Coalition would be the same as the one we embarked upon for us to join Recreate with regard to the ConCourt CAB. KK will take out the invitation for CCSA to join the TAROCH Coalition, as per Brigitte's invitation in italics below and which kick-started her invitation to the group. She will ask the members of CC SA to state if they want the chapter to be a part of the coalition, and if the answer is No, to state reasons why not.

******* INVITATION *******

I am delighted to invite your organization to formally join the TAROCH Coalition. To do so:

- Read the [Statement of Commitment](#)
- Submit your application through the [membership application form](#)

Here are a few other updates:

Information Briefing

Huge thanks to all of you who could participate in our briefing on 10 October. If you couldn't attend, here's the [recording](#). The lively discussions (not recorded) offered an opportunity to bring new perspectives to the table; many of the suggestions could be taken on board to help put the final touches to our key documents. For details see our [key takeaways](#) from the discussion.

Workspaces

I am also pleased to announce that each of the workspaces will be led by two co-chairs:

- Civil Society Statement: Teresa Nobre (Communia Association) and Hardiansyah (Wikimedia Indonesia)
- Advocacy: Patricia Diaz Rubio (Wikimedia Chile) and Maja Drabczyk (Centrum Cyfrowe).

Welcome Teresa, Hardi, Patricia and Maja! Looking forward to the Coalition progressing the work under your leadership.

Official launch

In the coming weeks, we will be announcing the launch of the Coalition on the Creative Commons blog and will let you know once it's live so you can encourage more organizations in your network to join.

Looking forward to promoting open access to cultural heritage at UNESCO and around the world with you all!

Best wishes,

Brigitte, with Connor and Beverley

Brigitte Vézina (she/her) | Director of Policy and Open Culture | Creative Commons

brigitte@creativecommons.org

***** **End of TAROCH Invitation** *****

Denise Nicholson presented the following report

*******REPORT FOR CREATIVE COMMONS SA CHAPTER MEETING ON 12
NOVEMBER 2024 by Denise Nicholson** *****

WIPO

Limitations and Exceptions for Libraries, Education, Disabilities, etc.

This matter is still on the agenda and will be discussed further at the next WIPO SCCR/45 meeting from 15-19 April 2025 in Geneva, Switzerland.

Public Lending Right

One matter that I thought would be of interest to this group, is the proposal by some WIPO members to do a study on the Public Lending Right (PLR), which about 35 countries, mainly in Europe, UK, Israel, Australia and New Zealand, have, either in their copyright law or in a separate law or policy. The US does not have a PLR. PLR is essentially a 'tax to read'. Libraries do not want a PLR in South Africa, Africa or any developing country.

When I was chair of the African Library and Information Association (AFLIA)'s Copyright and Legal Matters Committee, we published a [Statement](#) in October 2021, rejecting PLR in African Libraries. I have been opposing PLR in South Africa since about 2007 and co-authored a paper with Charles Masango from UCT entitled [Public lending right: prospects in South Africa's public libraries?](#) EIFL and IFLA have also made statements on this matter. See: [Resources on PLR](#)

Earlier this year, EIFL asked me to give some input into [WIPO's PLR study](#). See: [WIPO PLR study is fundamentally flawed](#). This matter will be on the next WIPO SCCR meeting agenda in April 2025.

I am working with ReCreate SA and IFLA CLM to organise a conference in Cape Town in late January/early February 2025 and we are hoping to have a session covering WIPO and other

issues at that conference. I will let you have more details once we have dates, venue and a provisional programme in place. If anyone would like to speak at the conference on any issue relating to access to information, copyright, AI, OA, or any special project you have been involved in that would interest others, etc. please let me know.

COPYRIGHT AMENDMENT BILL

In August 2024, I reported that the President had the Copyright Amendment Bill on his table, but despite various people writing to him asking him to sign the Bill, he did not do so. On 10 October 2024, Blind SA took legal action against the President and other related parties in the Constitutional Court, calling for him to sign the Bill, or to extend the read-in exception for accessible formats which the Constitutional Court had ruled on in September 2022, but they had lapsed on 21 September 2024, because the Bill was not signed at that stage. In response, the President referred the Bill to the Constitution questioning whether the review in Parliament in 2020/21 had addressed the constitutionality issues he was concerned about. It seems he has been strongly lobbied by multinationals, rightsholders and collecting societies, such as DALRO, SAMRO, CAPASSO and others, hence his decision to send it to the Constitutional Court instead of signing it.

The Constitutional Court, in its directions, notified parties that the matter of Blind SA against the President and other parties, and the ex Parte President Ramaphosa case had been consolidated and will be scheduled for hearing on 28 November 2024. Adams and Adams, Attorneys in Pretoria, representing various rightsholder groups and collecting societies lodged an application of intervention (not a usual process), whilst various other parties have applied to be amicus curiae (friends of the court) in the above consolidated matter.

ReCreate SA (which I co-founded in 2018 to form a loose alliance for organisations that supported the Bill and to rectify a lot of the disinformation and myths being circulated in the media by opponents of the Bill) lodged its amicus curiae application on 11 November 2024. ReCreate SA is being supported on a pro bono basis by the Legal Resource Centre in Cape Town and Johannesburg, and a group of Counsels from Johannesburg Bar. Parties supporting ReCreate SA's application are:

1. Creative Commons SA Chapter
2. Wikimedia SA
3. Library and Information Association of SA (LIASA)
4. Committee of Higher Education Libraries of South Africa (CHELSA)
5. Higher and Further Education Disability Services Association (HEDSA)
6. Wits Centre for Deaf Studies
7. SA National Deaf Association (SANDA)
8. Regional Universities Association Southern African (SARUA)
9. SA Democratic Teachers' Union (SADTU)
10. National Professional Teachers' Organisation of SA (NAPTOSA)
11. South African Guild of Actors (SAGA)
12. Music Makers United (MMU)
13. Directors' Association Africa (IDAA)
14. Authors Alliance on behalf of its SA members

15. Association for Progressive Communications
16. The South African Finishing Artists and Imaging Technicians Society (SAFAITS)
17. Data Science for Social Impact (DSFS), University of Pretoria
18. Right to Know (R2K) – pending (not sure if they got their consent in timeously).

Thanks to Creative Commons SA Chapter (especially Kathryn and Paul) and Wikimedia (Douglas) for supporting ReCreate's amicus curiae application and for getting the written consent to us timeously. Much appreciated.

A few organisations declined e.g. International Council for Archives (the only organisation representing archives), SAOU – a small teachers' union, Southern African Freelancers' Association (due to pressure from some of their members who oppose the Bill). DEAFSA didn't get their consent letter in on time. IFLA and EIFL offered to support us, but it was decided we wouldn't include international bodies as this is a constitutional matter.

The ConCourt must now determine if Parliament has adequately addressed the President's concerns, focusing only on:

- Sections 6A (Equitable remuneration or share in royalties regarding literary or musical works);
- 7A (Equitable remuneration or share in royalties regarding visual artistic works);
- 8A (Equitable remuneration or share in royalties regarding audiovisual works);
- 12A (General exceptions from copyright protection – Fair use)
- 12B (Specific exceptions from copyright protection applicable to all works)
- 12C (Temporary reproduction and adaptation)
- 12D (Reproduction for educational and academic activities)
- 19B (General exceptions regarding protection of computer programs)
- 19C (General exceptions regarding protection of copyright work for libraries, archives, museums and galleries)

If any of the above are found unconstitutional, the Bill will be sent back to Parliament for corrections. This means it cannot be signed until the Court rules on its constitutionality and any issues raised are addressed by Parliament. As I understand it, the Bill cannot be withdrawn completely as only the above sections are under scrutiny in the ConCourt.

I am not sure what the process will be on 28 November 2024, nor how long the matter might take, but I sure hope that the Constitutional Court will rule that the Bill is constitutional. If it does, the President must sign the Bill.

Denise R. Nicholson – 12 November 2024

*******End of Denise's Report*******

Scholarly Horizons - Resources on the Bill – see: under Blog, e-Bulletin and Resources, then Copyright, and Fair Use resources at :[Scholarly Horizons](#).

During the discussion around what had been specifically referred to the ConCourt by the President, Kathryn copied into the chat some text that had been publicly published in a LinkedIn post by Andrew Rens, a CC SA member and technology lawyer.

Extracted from LinkedIn posts by Andrew Rens, technology lawyer and member of CCSA:

“Despite Parliament’s passage of the CAB earlier this year, the President has not signed it into law. However, as of October 15, 2024, President Ramaphosa referred the CAB to the Constitutional Court for a ruling on their constitutionality. This action stems from the President’s concerns about certain provisions of the Bills, and he has requested the Court’s decision on whether these provisions comply with the Constitution. This step follows an earlier request by the President for Parliament to reconsider the Bills, which Parliament did”.

It's not news that President Ramaphosa referred the Copyright Amendment Bill and the Performers Protection Amendment Bill to the Constitutional Court.

What is surprising is that the referral chooses to attack two exceptions that no one opposes: 12C and 19B.

While 12A (fair use) and 19D (rights for blind people) have been getting all the attention these rights have not been opposed by anyone.

But that does not mean that they are unimportant - they are very important to the technology industry.

12C is a close imitation of provisions in the EU Copyright Directive and allows temporary copies (like the multiple copies made to let you read this) and 19B allows reverse engineering for interoperability.

In the rest of the world these are not controversial. Everyone in the tech industry relies on them and no-one opposes them (except maybe Larry Ellison).

But the President is committed to arguing that these exceptions are contrary to international law and that as a result they are unconstitutional infringements of copyright holders rights.

If you work in the tech industry you should be concerned.” (Rens, LinkedIn post).

*******End quote from LinkedIn post by Andrew Rens *******

There was a lot of lively discussion about the role of Parliament and the President. Derek Moore queried why all these data centres being built in South Africa - are these data lakes to be re-constituted, reframed and so on? Would South Africa for instance lose assetisation of the data? Denise replied that she does not think this has much of a bearing on this bill - it has technological measures and one IP lawyer was concerned that data and digital licensing was not in the CAB. DN does not think it has more of an impact on the bill. Some have queried why AI was not addressed in the CAB nor the extension of copyright terms. The answer is that the CAB can always be amended again, if need be, but Two questions: why not AI and also why not extend copyright - not done. Mkhosi Nkati - working on a project to come up with a policy - when you get it right, you can always amend it again.

Douglas said there are some issues relating to copyright and data and the bill which he said that advocate de Klerk - parliamentary legal drafter - indicated they intended to address in the future - it's really complicated but she did regret there is not something regarding data. Douglas also indicated he believed that you cannot copyright data as it is not a product of human creativity - so would be a bad place for a data law to live. But interesting to note that also the government cannot use copyright in this regard.

KK indicated that there are data centres in SA due to the POPIA and the need to keep some data in-country. Sensitive data for the country / national interests and so on.

***** **General** *****

Kathryn said that there should maybe be a place where CC SA members can add - if just via a referatory of links - the ongoing work they are doing, from presentations and so on. She noted that both she and Glenda Cox and Michelle Wilmers had presented at the Open Ed conference and were also due to present at OE Global - with Glenda kindly doing one presentation on behalf of a number of authors who could not make it.

Paul said there is a Commonwealth of Learning conference in September 2025 in Botswana. He is planning to go, and he and Kathryn will put in for a poster on how to set up a CC chapter. Since it does fund those who go there to present, there is a lot of competition around presentations so he advises that a poster is a good option. It is one of the best educational networking events around the world. About 35 to 40 countries will be presented.

[PCF11: Call for abstracts and proposals - Commonwealth of Learning](#)

KK will help TN with her approach to CC HQ so she can hopefully be refunded by her employer for the CC course - she wants to do it in 2025.

DS - would like to circulate the news: there was a Wiki Indaba in early October 2024 and he gave a presentation on the state of CAB to the Wikimedia community and will continue to support the efforts to get it through. Concepts such as freedom of panorama inter alia are critical to South Africa and he also wants to take these concepts and amendments throughout Africa. He is also hoping for 3D support and would like to host those doing 3D rendering and support those organisations doing this work and try to ensure they are opened up to the public and is engaging with a group in Cape Town he hopes will release their work under an appropriate CC license that can be placed on Wikimedia Commons.

DN said people can get information from her via WhatsApp on what is happening with the CAB and others. She sends messages around once a week or more frequently if only if there are big updates, there are no obligations and no payments, just a means of keeping everyone in touch with developments. If you want to be a member of her WhatsApp list regarding the CAB, then please email her with your telephone number on: denise.nicholson@scholarlyhorizons.com.

Next meeting

Date: Tuesday 4 February 2025

Time: 15:00 - 16:30

Video call link: <https://meet.google.com/ydo-kppz-imx>

The meeting closed at 16:40.