



South Africa's Copyright Amendments: Update

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About PASA

- PASA (Publishers' Association of South Africa) is the largest publishing industry body in South Africa with 147 members
- Represents book and journal publishers in South Africa in the field of non-fiction, fiction, education, academic and trade publishing
- Membership comprises the majority of South African publishing houses, for profit and non-profit, university presses, small and medium sized companies and multinational publishing enterprises
- More information can be found on PASA's website, www.publishsa.co.za.



The Copyright Bill, 2017

- **SA Cabinet directive** - Department of Trade and Industry (DTI) to resolve challenges faced by musicians, performers and other rightsholders in getting royalties for use of their works and fair treatment
- **Copyright Review Commission** - Established by DTI to address the above. Its report (2012), highlighted the need for legislative changes to protect artists, performers etc. – mostly directed at the music industry, but also reproduction rights in published works.
- **The Copyright Bill, 2017** - Submitted to Parliament in the absence of policy on Intellectual Property and with no independent assessment of its impact.
- **The Bill's flaws** – Insufficient consultation, poorly considered exceptions, incorrect terminology such as “use” and “access” not applied elsewhere in the Copyright Act etc.
- **PwC study** - PASA commissioned PricewaterhouseCoopers (PwC) to conduct an economic impact assessment study on the Bill

PwC Study

“The economic impact of ‘fair use’ provisions and exceptions for education in the Copyright Amendment Bill on the South African publishing industry.”

The PwC study finds “**significant negative consequences**” for the SA publishing industry, noting its reliance on educational publishing, specifically:

- **Sales** - Weighted average decline in sales of 33% - implies a decrease in sales revenue of approx. R2.1 billion on the baseline, concomitant reductions in GDP, and VAT and corporate tax revenue collections.
- **Revenue** - Decline in revenue
- **Licensing** - Reduction in licensing income via collective management
- **Imports** - to increase as a proportion of sales in the domestic market.
- **Exports** - to decrease as a proportion of total sales.
- **Employment** - Weighted decline in employment of 30%, associated reductions in personal tax collections, equating to 30%, equating to around 1 250 full-time equivalent jobs.
- **Publishers** - 89% of publishers surveyed stated that promulgation of Bill in its current form will impact negatively on their operations
→ restructuring, retrenchments and business closure

Controversial themes in the Bill -1

State expropriation: State expropriation as a result of funding; custodianship of copyright works by the “orphan works” provisions

Exceptions: Overbroad exceptions to copyright, specifically for education.

Fair use: Introduction of ‘fair use’ defence based on US four-factor test, admitting more purposes than in the United States (including “education”, “underserved populations”, “public administration”)

User rights - Exclusive rights of copyright of an additional right by a “user, performer, owner, producer or author” to claim a royalty for the “use” of the copyright work is not only an error but removes the exclusivity of the rights of copyright owners.

Controversial themes in the Bill -2

Parallel importation: Reversal of recognised rules relating to parallel importation will undermine the local publishing industry not benefit for users

Moral rights: Provisions that are held out to be improvements to authors' moral rights, instead take rights away from authors (e.g. in exceptions)

Limitation on assignments: A limitation on all assignments to a period of 25 years. Incorrect implementation of the recommendation of the Copyright Review Commission

Contract override: A blanket override of all contractual terms and a blanket importation of statutorily implied terms in licence agreements.

Changed Focus of the Bill

- Original directive - Benefit the position of authors and performers
- BUT the Bill as tabled indicates a change in direction to “users’ rights” agenda and State control

International Treaties

- The Copyright Bill - meant to bring SA legislation in line with WCT and WPPT.

BUT there are gaps in full implementation (e.g. no distribution right).

- Even the welcome, albeit much-delayed, introduction of the exclusive right of “communication to the public” and protection of TPMs and DRM, do not make up for the lack of effective remedies for infringement in the digital context.

The Copyright Bill and Parliament

- **Rewriting the Bill** - Following public hearings in early August, Parliament found shortcomings in the Bill and decided not to return the Bill to Government but to rewrite it itself. Task Team established.
- **Concerns** - Lack of in-house know-how in Parliament, activists appointed as technical advisers, uncertainty about a panel of experts etc.
- **Copyright Alliance** – Alliance of concerned creatives who include publishers, composers, musicians, collecting societies. Petitions presentation to Parliament on what creative industries do and how they rely on copyright to do it; against apparent bias in the process.



The Copyright Bill – Next Steps

- Parliament's plan – Work on the Bill intensively over the period mid-October to early December.
- Alternative Bill ready by early 2018, subject to a fresh round of public hearings.
- Aim – Present redrafted Bill to the General Assembly in March 2018, passage before elections in 2019.