

Proposed amendments

Copyright Amendment Bill

Clause 1

“**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;”.

Recommend: Retain wording as advertised

“**authorized entity**” means—

- (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;”.

Recommend: Retain wording as advertised

“**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;”.

Recommend: Retain wording as advertised, but include “wire”

“**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;](#)”.

Recommend definition of “lawfully acquired” be removed

Bill

‘technological protection measure’—

(a) means any process, treatment, mechanism, technology, device, system or component that in the normal course of its operation prevents or restricts infringement of copyright in a work; and

[\(b\) does not include a process, treatment, mechanism, technology, device, system or component, to the extent that in the normal course of its operation, it controls any access to a work for non-infringing purposes;](#)

Proposed amendment

“‘**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;

Recommend: Retain wording of Bill before advertisement, including par (b) + Add “product”.

Bill

‘**technological protection measure circumvention device**’ means a device primarily designed, produced or adapted for purposes of enabling or facilitating the circumvention of a technological protection measure;

Proposed amendment

‘**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;](#)”;~~ and”

Recommend: Retain wording of Bill before advertisement + Add “or service”

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).

Subsection to be deleted from the Bill:

“(7) (a) This section applies to a literary or musical work where copyright in that work was assigned before the commencement date of the Copyright Amendment Act, 2017, if that literary or musical work—

- (i) falls within the application of this Act; and
- (ii) is still exploited for profit.

(b) The Minister must—

- (i) develop draft regulations setting out the process to give effect to the application of this section to a work contemplated in paragraph (a);
- (ii) conduct an impact assessment of the process proposed in the regulations contemplated in subparagraph (i); and
- (iii) table the draft regulations and impact assessment contemplated in subparagraphs (i) and (ii) respectively, in the National Assembly for approval, before the Minister may make the regulations contemplated in subparagraph (i) in accordance with the process envisaged in section 39.

(c) The share in the royalty only applies to royalties received, in respect of a work contemplated in paragraph (a), after the commencement date contemplated in section 38(2) of the Copyright Amendment Act, 2017.”

Already agreed to by Committee

Clause 7

(Retrospective clause and re delegations to Minister)

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

Subsection to be deleted from the Bill

- “(7) (a) This section applies to a visual artistic work where copyright in that work was assigned before the commencement date of the Copyright Amendment Act, 2017, if that visual artistic work—
- (i) falls within the application of this Act; and
 - (ii) is still exploited for profit.
- (b) The Minister must—
- (i) develop draft regulations setting out the process to give effect to the application of this section to a work contemplated in paragraph (a);
 - (ii) conduct an impact assessment of the process proposed in the regulations contemplated in subparagraph (i); and
 - (iii) table the draft regulations and impact assessment contemplated in subparagraphs (i) and (ii) respectively, in the National Assembly for approval, before the Minister may make the regulations contemplated in subparagraph (i) in accordance with the process envisaged in section 39.
- (c) The share in the royalty only applies to royalties received, in respect of a work contemplated in paragraph (a), after the commencement date contemplated in section 38(2) of the Copyright Amendment Act, 2017.”

Already agreed to by Committee

Gender neutral drafting:

“7B. (1) The author of a visual artistic work in which copyright subsists or ~~his or her~~ their heirs, as may be applicable, must be paid royalties on the commercial resale within the art market of that work.

...

(3) The seller and the art market professional concerned are jointly and severally liable to pay the royalties contemplated in subsection (1) to the author or ~~his or her~~ their heirs, as may be applicable.

(4) The author of a visual artistic work or ~~his or her~~ their heirs, as may be applicable, shall be entitled to receive a resale royalty if—

...

7D. (1) The resale royalty right of an author of a visual artistic work or ~~his or her~~ their heirs, as may be applicable, expires at the end of the period of 50 years calculated from the end of the calendar year—

...

7E. (2) In the case of a bequest of a visual artistic work by an author who did not assign copyright in that work in ~~his or her~~ their lifetime, the bequest must be read as including the resale royalty right.”

Already agreed to by Committee

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).

Subsection to be deleted from the Bill

- (5) (a) This section applies to an audiovisual work where copyright in that work was assigned before the commencement date of the Copyright Amendment Act, 2017, if that audiovisual work—
- (i) falls within the application of this Act; and
 - (ii) is still exploited for profit.
- (b) The Minister must—
- (i) develop draft regulations setting out the process to give effect to the application of this section to a work contemplated in paragraph (a);
 - (ii) conduct an impact assessment of the process proposed in the regulations contemplated in subparagraph (i); and
 - (iii) table the draft regulations and impact assessment contemplated in subparagraphs (i) and (ii) respectively, in the National Assembly for approval, before the Minister may make the regulations contemplated in subparagraph (i) in accordance with the process envisaged in section 39.
- (c) The share in the royalty only applies to royalties received, in respect of a work contemplated in paragraph (a), after the commencement date contemplated in

section 38(2) of the Copyright Amendment Act, 2017.

Already agreed to by Committee

Clause 11

Gender neutral drafting

“9A. (2) (d) Any payment made by the user of the sound recording in terms of this subsection shall be deemed to have discharged any obligation which that user might have to make any payment in respect of ~~his or her~~ their use of a corresponding fixation in terms of section 5 of the Performers’ Protection Act, 1967 (Act No.11 of 1967).

(3) In the event of any right to a royalty being assigned to any successor in title, either by contractual arrangement, operation of law, testamentary disposition or otherwise, any successor in title shall be entitled to enforce such right to a royalty against the person who in terms of this section is obliged to pay or against ~~his or her~~ their successor in title.”

Already agreed to by Committee

New Clause

Amending sections 11A and 11B

Section 11A

“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] Making of 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;
- (dA) communicating the work to the public by wire or wireless means;
- (dB) 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;
- (dC) 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;
- (h) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the computer program.”.

Recommend: Retain the wording as advertised

Clause 13

Section 12A

(1) – deletions of par (i), (iv) and (vi)

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

“(i) Research, private study or personal use, including the use of a lawful copy of the work at a different time or with a different device;”

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

“(iv) scholarship, teaching and education;”

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

“(vi) preservation of and access to the collections of libraries, archives and museums; and”

Recommend: Retain paragraphs (i), (iv) and (vi)

Iro Name of the author to be mention if it appears on the work, change “and” to “as well as” and add “if it appears on the work”

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.”.

Recommend: Add “if it appears on the work” iro name of author

As this clause deals with general principles recommend that the phrase “as far as it is practicable” not be included in the Bill.

Addition of par (d) applying fair use principles to all exceptions

12A(d) – New paragraph

“(d) The exceptions authorized by this Act in sections 12B, 12C, 12D, 19B and 19C, 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).”.

Recommendation: Delete 12A(d)

Section 12B

S12B(1)(a): *Quotations: Name of the author to be mention if it appears on the work + deleted “practicable” iro (ii) and (iii) + substitute “to the extent justified by the purpose” with fair practice*

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

“(i) the extent thereof shall not exceed the extent reasonably justified by the purpose, and 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;”

Recommend: use BOTH fair practice and extent justified by the purpose

As the Act already has this exception and does not provide the limit iro “as far as is practicable”, recommend that it not be included in the Bill either.

Use of illustrations for teaching - 12B(1)(b) (move to 12D(9)):

On page 12, from line 44, to omit paragraph (b).

The Bill reads:

(b) any illustration in a publication, broadcast, sound or visual record for the purpose of teaching: Provided that such use shall not exceed the extent justified by the purpose: Provided

further that, 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 act of teaching or in the illustration in question;

Recommend: More suited in 12D (education)

“Ephemeral rights” (1st amendment – substitution for section 12B(1), par (c))

The Bill reads:

(c) the reproduction of such work by a broadcaster by means of its own facilities where such reproduction or any copy of the reproduction is intended exclusively for lawful broadcasts of the broadcaster and is destroyed before the expiration of a period of six months immediately following the date of the making of the reproduction, or such longer period as may be agreed to by the owner of the relevant part of the copyright in the work: Provided that any such reproduction of a work may, if it is of an exceptional documentary nature, be preserved in the archives of the broadcaster, but shall, subject to the provisions of this Act, not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;

Proposed wording:

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;”

Recommend: Wording of Bill prior to advert be retained

12B(1)(d): Name of the author to be mention if it appears on the work + deleted “practicable”

“(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;”

Already agreed to by Committee

12B(1)(e): Delete sub par (i) - Name of the author to be mention if it appears on the work + deleted “practicable” iro (ii) and (iii) + substitute “to the extent justified by the purpose” with fair practice + add intro sentence of (iii)

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

Already agreed to by Committee

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

The Bill reads:

“(i) the reproduction by the press, or in a broadcast, transmission or other communication to the public of an article published in a newspaper or periodical on current economic, political or religious topics, and of broadcast works of the same character in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved;”

Already agreed to by Committee

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 to the extent justified by the purpose; 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 to the extent justified by such purpose;~~”.

Recommend: As the Act already has this exception and does not provide the limit iro “as far as is practicable”, recommend that it not be included in the Bill either.

Recommend: use only extent justified by the purpose

12B(1)(f)(ii): Translations: changed the wording to read “non-commercial purposes” instead of “not for commercial purposes” + added furtherance of language and culture as a reason for translation + substitute “to the extent justified by the purpose” with fair practice

“(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~~ and

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

Recommend: Only retain fair practice

Recommend: “and” in stead of “or”

12B(1)(i): *Personal copies: (1st amendment iro personal copies) substitute “individual” with “natural person” + add lawfully acquired + moving S12A(1) requirements iro different times / devices + adding device to be owned by that natural person + substitute “to the extent justified by the purpose” with fair practice*

The Bill reads:

- (i) the making of a personal copy of such work by an individual for the individual's personal use and made for ends which are not commercial: Provided that such use shall not exceed the extent justified by the purpose.

Proposed amendment

“(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 owned by that natural person, 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.”

Recommend: the addition of “lawfully acquired” to S12B(1)(h) and subsection S12(3)(b) be removed

Recommend: S12A's wording to revert to section 12A and removed here

Recommend: Only retain fair practice

“Ephemeral rights” (2nd amendment – inserting a new subsection (2))

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

Recommend: Wording of Bill prior to advert be retained

Personal copies: (2nd amendment iro personal copies)

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.”.~~

Recommend: subsection S12(3)(b) be removed

Section 12C

Correcting the lay out of the section in subsection (1) + add three step test - subsection (2)

“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.

Recommend: Wording as corrected iro the lay out error, to be retained

~~(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.”.~~

Recommend: Remove the test as advertised – revert to wording before the advert

Section 12D

(1) - Substitute “to the extent justified by the purpose” with fair practice + add three step test

The Bill reads:

“12D. (1) Subject to subsection (3), a person may make copies of works or recordings of

works, including broadcasts, for the purposes of educational and academic activities:
~~Provided that the copying does not exceed the extent justified by the purpose.”~~

Proposed amendment:

“(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—

- ~~(a) the extent of the reproduction or the portion of the broadcast shall be compatible with fair practice;~~
- ~~(b) a reproduction may only be made in the cases stipulated in this section;~~
- ~~(c) the reproduction does not conflict with the normal exploitation of the copyright work; and~~
- ~~(d) the reproduction does not unreasonably prejudice the legitimate interests of the copyright owner flowing from their copyright in that work.~~

Recommend: Remove fair practice in 12D(1)(a)

Recommend: Remove the test as advertised – revert to wording before the advert

(8) - *deleted “practicable” + Name of the author to be mention if it appears on the work + substitute “to the extent justified by the purpose” with fair practice*

(8) (a) The source of the work reproduced and the name of the author, ~~if it appears on the work,~~ shall, ~~as far as is practicable,~~ 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;”.

As this is not an exception that is contained in the Act, but a new exception, it is recommended that “as far as is practicable” is included.

(9) – *moved here from 12B(1)(b) + delete to the extent practicable + – substitute “to the extent justified by the purpose” with fair practice + deleted if the name appears “in” the work – only retained “on the work”*

(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

not exceed the extent justified by the purpose, and 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.”.

As the Act already has this exception and does not provide the limit iro “as far as is practicable”, recommend that it not be included in the Bill either.

Recommend: use BOTH fair practice and extent justified by the purpose

Clause 19

Gender neutral drafting:

Clause 19

“19B. (1) A person having a right to use a copy of a computer program may, without the authorization of the copyright owner, observe, study or test the functioning of the program in order to determine the ideas and principles, which underlie any element of the program if that person does so while performing any of the acts of loading, displaying, executing, transmitting or storing the program, which ~~he or she is~~ they are entitled to perform.”

Already agreed to by Committee

Clause 20

Section 19C - may not permit a copy of the work / for commercial purposes

“(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 for commercial purposes.~~”

Recommend: Retain the words “for commercial purposes”

Gender neutral drafting:

(14) An officer or employee of a library, archive, museum or gallery acting within the scope of ~~his or her~~ their duties shall be protected from any claim for damages, from criminal liability and from copyright infringement when the duty is performed in good faith and where there are reasonable grounds for believing that—

Already agreed to by Committee

Section 19D

(1) – deletion of “as may be prescribed” + inclusion of “authorized entity” in appropriate areas + – integrity of the work respected taking into account what is required (altered to be closer to treaty wording) + export / import only for distribution or to make it available to persons with a disability + substitute “to the extent justified by the purpose” with fair practice + Name of the author to be mention if it appears on the work

“(1) Any person ~~as may be prescribed and that~~ who 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:

Prescribed is recommended to be retained

Recommend: Change “that” to “who”

- (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; and

Already agreed to by Committee

- (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 their personal use; or

(ii) a person that serves persons with disabilities, including an authorized entity, for personal use by a person with a disability.

Already agreed to by Committee

(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 who 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, as long as such activity is undertaken on a non-profit basis by that person.

Recommend: Change “that” to “who”

Wording advertised:

(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.

Proposed correction:

(b) A person contemplated in paragraph (a) may not export or import an accessible format copy where such person knows, or has reason to know, that the accessible format copy will be used for purposes other than to aid persons with a disability.”.

The wording to be amended to read as the treaty reads, or as the treaty intends. Iro proposed wording – “reason to believe” could be replaced with “reason to know” as per the treaty wording

(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, on any accessible format copy; and

Accessible format copies can in practice easily include the name of the author. Recommend that “as far as is practicable” not be included in the Bill.

(b) use of the accessible format copy exclusively by a person with a disability.”.

Recommend: Section 19D(4)(b) to be deleted.

Clause 21

Gender neutral drafting:

20. “(1) Notwithstanding the **[transfer]** assignment of the copyright in a **[literary, musical or artistic work, in a cinematograph film or in a computer program]** work, the author shall have the right to claim authorship of the work, subject to the provisions of this Act, and to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author: Provided that an author who authorizes the use of **[his]-or-her** their work in a sound recording or [cinematograph film or a television broadcast] audiovisual work or an author of a computer program or a work associated with a computer program may not prevent or object to modifications that are absolutely necessary on technical grounds or for the purpose of commercial exploitation of the work.”

Already agreed to by Committee

Clause 23(b)

Gender neutral drafting:

22. (4) A non-exclusive licence to do an act which is subject to copyright may be **[written or oral]** verbal or in writing, or may be inferred from conduct, and may be revoked at any time: Provided that such a licence granted **[by contract]** verbally or in writing, or an electronic equivalent thereof, shall not be revoked, either by the person who granted the licence or **[his]-or-her** their successor in title, except as the contract may provide, **[or]** by a further contract or by operation of law.”; and

Already agreed to by Committee

Clause 24

Gender neutral drafting:

“22A.

(2) Before making an application in terms of subsection (1), the applicant must publish his-or-her their intention to make such application by notice in the Gazette in English and one other official language, as well as in two daily newspapers having general circulation throughout the Republic in any official language.

(7) Where a licence is granted in terms of subsection (4), the Commission may direct the applicant to deposit the amount of the royalty determined in a particular account so as to enable the owner of the copyright in the work or, as the case may be, his-or-her their heirs, executors or legal representatives to claim such royalty at any time.

(9) Any person who can adduce evidence for the purposes of proving that ~~he or she is~~ they are the owner of copyright in an orphan work must submit ~~his or her~~ their details for registration on the database of the register of copyright referred to in subsection (6)(a) and may for the period during which the owner of copyright was unknown, recover royalties as contemplated in subsection (8).

Already agreed to by Committee

Clause 25

Gender neutral drafting:

“22B. (8) (a) Subject to subsection (7), any person who intentionally gives ~~him or herself~~ themselves out as a collecting society in terms of this Chapter without having been accredited, commits an offence.”

Already agreed to by Committee

Clause 27

Section 27 - Offences

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 necessary authority ~~of the owner of the copyright and for commercial purposes~~—

(a) communicates the work to the public by wire or wireless means; ~~and or~~

(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 they know to be infringing copyright in the work, shall be guilty of an offence.”

Recommend: Remove the reference to owner – the owner could have authorised another person to give authority. Necessary authority is all that is required.

Recommend: Due to the serious nature of some breaches that are not for commercial purposes, it is recommended that the offence be made applicable to infringement that are for commercial, as well as to those that are for non- commercial purposes.

Recommend: A person should have knowledge (See “which they know” - as advertised) Considering the Cybercrimes Act specifically (only intent constitutes an offence)

and offences in general (negligence rarely constitutes an offence, recommend that negligence should not be included as an offence.

Recommendation: Paragraphs should be numbered (a) and (b) and not (eA) and (eB).

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

“(5B) Subject to section 28P, 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 the~~ device or service will, or is likely to be used to, infringe copyright in a work protected by an effective 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;

Considering the Cybercrimes Act specifically (only intent constitutes an offence) and offences in general (negligence rarely constitutes an offence, recommend that negligence should not be included as an offence.

(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~~ they are 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.~~

(5C) Subject to section 28S, any person who—

(a) in respect of any copy of a work, removes or modifies any copyright management information; or

(b) makes, imports, sells, lets for hire, offers or exposes for sale, advertises for sale or hires or communicates 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,

which they know to be infringing copyright in the work, shall be guilty of an offence.”

Recommend the verbs be corrected

Recommend: A person should have knowledge

Gender neutral drafting:

“27. (5A) 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—

...

(c) circumvents such technological protection measure when ~~he or she is~~ they are 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.’

Already agreed to by Committee

Clause 29

S280 - adding “or service” + change “has reason to believe” to “should reasonably have known” + remove reference to *Electronic Communications and Transactions Act*

“280. (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~~, 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.”~~

If negligence is being removed from S27 (offences), recommend that the consequential amendments to S280 be discarded – wording can revert to “believe”

~~(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).~~

Removal of reference to ECTA already agreed to by Committee

S28P - remove reference to *Electronic Communications and Transactions Act* + add a reference to *regulations made under the Act*

~~“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:~~

Removal of reference to ECTA already agreed to by Committee

~~(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).”~~

Adding a reference to regulations made under the Act already agreed to by Committee

Gender neutral drafting:

~~“28P. (3) A person engaging the services of another person for assistance to enable such person or user to circumvent a technological measure in terms of subsection (2)(b) shall maintain a complete record of the particulars of the—~~

~~(a) other person, including his or her their name, address and all other relevant information necessary to identify him or her them; and”~~

Already agreed to by Committee

S28S: change “has reason to believe” to “should reasonably have known”

“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.”.

If negligence is being removed from S27, recommend that the consequential amendments to S28O be discarded – wording can revert to “believe

Clause 31

Section 29C – corrected the subsection numbering + Gender neutral drafting:

“29C. (2.3) A member must not—

- (a) make private use of or profit from confidential information obtained as a result of performing ~~his or her~~ their official duties as a member of the Tribunal; or”

Already agreed to by Committee

Clause 33

Section 39(1) - Corrected (cH) to read “28P”

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

Already agreed to by Committee

Section 39 – New subsection for regulations iro recognising entities iro persons with a disability

New subsection (2) – current subsection (2) to become (3):

“(2) The Minister must make regulations providing 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.](#)

(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.”.

Recommended: No changes

Clause 35

Gender neutral drafting:

– Schedule 2, Part A, Item 3

(1)(b)(ii) + (2)

“(ii) after due diligence on ~~his or her~~ their part, was unable to find such copyright owner and can prove that ~~he or she has~~ they have by registered mail or electronic mail sent a copy of ~~his or her~~ their application contemplated in item 2(1), to the principal place of business of the publisher whose name appears on the copyright work.”

“(2) Where the copyright owner of the work in question is known and can be located, no licence shall be granted unless ~~he or she has~~ they have been given an opportunity to be heard.”

– Schedule 2, Part A, Item 4(4)

“(4) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the copyright owner, ~~he or she~~ they shall report the fact to the Tribunal who shall make all efforts to ensure that such transmittal is in internationally convertible currency or its equivalent.”

– Schedule 2, Part B, Item 3

(1)(b)(ii) + (2)

“(ii) after due diligence on ~~his or her~~ their part, was unable to find such copyright owner and can prove that ~~he or she has~~ they have by registered mail or electronic mail sent a copy of ~~his or her~~ their application contemplated in item 2(1), to the principal place of business of the publisher whose name appears on the copyright work.

(2) Where the copyright owner is known and can be located, no licence shall be granted unless ~~he or she has~~ they have been given an opportunity to be heard.”

– Schedule 2, Part B, Item 4(3)

“(3) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the copyright owner, ~~he or she~~ they shall report the fact to the Tribunal who shall make all efforts to ensure such transmittal in internationally convertible currency or its equivalent.”

Already agreed to by Committee

Performers' Protection AB

Clause 1

“ **'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;”;

Recommendation: Retain wire

Clause 2

Gender neutral drafting:

“3. (2) A performer shall, independently of a performer’s economic rights, during the circumstances contemplated in subsection (1) and after the transfer of ~~his or her~~ their economic rights, as regards ~~his or her~~ their live performances or performances fixed in audiovisual fixations or sound recordings, have the right—

- (a) to claim to be identified as the performer of ~~his or her~~ their performances, except where the omission is dictated by the manner of the use of the performance; and
- (b) to object to any distortion, mutilation or other modification of ~~his or her~~ their performances that would be prejudicial to ~~his or her~~ their honour or reputation, taking due account of the nature of audiovisual fixations or sound recordings.

(3) The rights granted to a performer in accordance with subsection (2) shall, after a performer’s death, be maintained until the expiry of the economic rights granted in terms of this Act or other relevant provisions of the Copyright Act.

(4) A performer enjoys the following exclusive rights of authorising, as regards ~~his or her~~ their performances:

- (a) The broadcasting and communication to the public of ~~his or her~~ their unfixed performances except where the performance is already a broadcast performance against payment of royalties or equitable remuneration;

- (b) the fixation of ~~his or her~~ their unfixed performances in an audiovisual fixation or a or a sound recording;
- (c) the direct or indirect reproduction of ~~his or her~~ their performances that are fixed in audiovisual fixations or sound recordings, in any manner or form;
- (d) the making available to the public of the original and copies of ~~his or her~~ their performances fixed in audiovisual fixations or sound recordings through sale or other transfer of ownership;
- (e) the commercial rental to the public of copies of ~~his or her~~ their performances fixed in audiovisual fixations or sound recordings, even after distribution of such copies by, or pursuant to, authorisation by the performer;
- (f) the making available to the public of ~~his or her~~ their performances fixed in audiovisual fixations or sound recordings, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (g) the broadcasting and communication to the public of ~~his or her~~ their performances, fixed in audiovisual fixations or sound recordings against payment of royalties or equitable remuneration; and
- (h) distributing the original or a copy of an audiovisual fixation or sound recording to the public.”.

Already agreed to by Committee

Clause 3

Gender neutral drafting:

“3A. (1) Where a performer has consented to fixation of ~~his or her~~ their performance in an audiovisual fixation or sound recording, the exclusive rights of authorisation granted to a performer in terms of section 3(4)(c), (d), (e), (f), (g) and (h) shall be transferred to the producer of such audiovisual fixation or sound recording, or ~~his or her~~ their licensee.”

...

Already agreed to by Committee

Section 3A – Align with treaty wording

“(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;”.

Already agreed to by Committee

Gender neutral drafting:

3B. (1) A producer of a sound recording, who is also the owner of copyright in that sound recording, enjoys the exclusive right of authorising—

- (a) the direct or indirect reproduction of ~~his or her~~ their sound recording in any manner or form;
- (b) the making available to the public of the original and copies of ~~his or her~~ their sound recording through sale or other transfer of ownership;
- (c) the commercial rental to the public of the original and copies of ~~his or her~~ their sound recording even after distribution of them by or pursuant to the authorisation by the producer; and
- (d) the making available to the public of ~~his or her~~ their sound recording by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them.”

Clause 4

Gender neutral drafting:

“5. (1)(a)

(iii) make a reproduction of [a fixation of] an audiovisual fixation or sound recording that contains a performance of such performer—

(aa) if the original audiovisual fixation or sound recording[, other than a fixation excluded by section 8 from the necessity for obtaining the consent of the performer,] was itself made without [his or her] their consent and is not excluded by section 8 from the necessity for consent of the performer; [or]

(bb) if the reproduction is made for purposes other than those in respect of which such performer gave [his or her] their consent to the making of the original audiovisual fixation or sound recording [of a reproduction thereof]; or

(cc) if the original audiovisual fixation or sound recording was made in accordance with the provisions of section 8 and the reproduction is made for purposes not covered by those provisions; **[or]**”

...

“(2) In the absence of an agreement to the contrary, a performer’s consent to the broadcasting of **[his or her] their** performance shall be deemed to not include **[his or her] their** consent to the rebroadcasting of **[his or her] their** performance, the audiovisual fixation or sound recording of **[his or her] their** performance for broadcasting purposes, **[and] nor** the reproduction for broadcasting purposes of such audiovisual fixation or sound recording.”;

...

“(4) (a) A performer who has authorised the audiovisual fixation or sound recording of **[his or her] their** performance shall, in the absence of any agreement to the contrary, be deemed to have granted to the **[person who arranges] producer [for] of** such audiovisual fixation or sound recording to be made, the exclusive right to receive the royalties or equitable remuneration, whichever is applicable, contemplated in subsection (1)(b) in respect of any broadcast, transmission, sale, commercially renting out, distribution or communication of such **[fixed performance] audiovisual fixation or sound recording**: Provided that the performer is entitled to share in any **[payment] royalties or equitable remuneration** received by the **[person who arranges for] producer** of the fixation, in the manner agreed upon between the performer and the **[person who arranges] producer** for such audiovisual fixation or sound recording, or between their **[representative] respective** collecting societies.”

Already agreed to by Committee

Clause 5

Gender neutral drafting:

“8. (2) A performance, **[a fixation] an audiovisual fixation or sound recording** of a performance or a reproduction of such **[a fixation] an audiovisual fixation or sound recording** may be used without the consent required by section 5, if it is for—

- (a) **[if it is for]** the purposes of private study or personal and private use; **[or]**
- (b) **[if it is for]** the purposes of criticism or review or for the purpose of reporting on current events, provided that not more than short excerpts from the performance are used and, whenever possible, the performer’s name or the names of the leading performers are acknowledged; **[or]**
- (c) **[if it is for]** the purposes of teaching or for scientific research; **[or]**
- (d) **if it is for]** the purpose of legal proceedings; **[or]**

(e) **[if it is for]** the demonstration of recording, amplifying or similar apparatus, provided that the demonstration is made by a licensed dealer on **[his] ~~or her~~ their** premises to a specific client~~].~~]; or

~~(f) purposes which are regarded as exceptions in terms of the Copyright Act).~~”; and

...

(3) (a) A broadcaster may make by means of **[his or her] their** own facilities **[a fixation] an audiovisual fixation or sound recording** of a performance and reproductions of such fixation without the consent required by section 5~~],~~ **provided**: Provided that, unless otherwise stipulated, the audiovisual fixation or sound recording or any reproduction thereof~~—~~”

Already agreed to by Committee

Clause 6

Section 8D – missing word

“(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—“

Already agreed to by Committee

Clause 7

(following from the technical amendments made to 28O and 28P)

Section 8E - remove reference to Electronic Communications and Transactions Act

~~(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).~~

Removal of reference to ECTA already agreed to by Committee

Section 8F - remove reference to Electronic Communications and Transactions Act

“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:”

Removal of reference to ECTA already agreed to by Committee

Gender neutral drafting:

“8F. (3) A person engaging the services of another person for assistance to enable such person or user to circumvent a technological measure in terms of subsection (2)(b) shall maintain a complete record of the particulars of the—

(a) other person, including ~~his or her~~ their name, address and all other relevant information necessary to identify ~~him or her~~ them; and

(b) purpose for which the services of such other person has been engaged.”

Already agreed to by Committee