

Creative coalition to challenge Copyright Amendment Bill

Coalition for Effective Copyright rallies to protect the rights of creators, producers, publishers and those working in the creative sector from the far-reaching negative impact of the bill.



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Organisations representing a range of creative arts, production and publishing interests have joined forces to call for a thorough review of the Copyright Amendment Bill in its current form.

The Coalition for Effective Copyright comprises:

- The Music Publishers Association of South Africa (MPASA)
- Independent Black Filmmakers Collective (IBFC)
- The Publishers Association of South Africa (PASA)
- Academic and Non-Fiction Authors of South Africa (ANFASA)
- Printing SA (PIFSA)
- Recording Industry of South Africa (RiSA)
- RiSA Audio Visual (RAV);
- Dramatic, Artistic, Literary Rights Organisation (DALRO)
- Visual Arts Network of South Africa (VANSA)

The Coalition is calling on the NCOP to undertake further stakeholder engagement before passing this bill in what they believe will be a rubberstamping exercise on 20 March 2019.

The need to update South Africa's outdated Copyright law is not disputed and the Coalition agrees with the intentions of bringing our copyright law up-to date with the digital age; and protecting the rights of artists, writers, filmmakers and composers.

However, the Coalition, as well as numerous individual publishers, musicians, audio-visual practitioners, writers and academics, is concerned that instead of protecting the rights of content creators, the Bill will destroy their livelihoods and harm the academic, arts, audio-visual and publishing sectors collectively.

"One of the key issues is a provision that allows for 'fair use' of other people's work, without infringing copyright," said Collen Dlamini, representing the publishers' associations and the broader book sector value-chain. Our concern is that free publication and reproduction of intellectual property which will rob the creators of their livelihood and make it commercially unviable for new works to be created or published. The digital colonisation of our education is imminent."

Nhlanhla Sibisi from RiSA is concerned about the weighting that the Bill gives to 'users' of the content at the expense of creators, producers and publishers: "The bill places the onus on the artists and publishers to challenge the use of rights protected material in a court of law. We know that most artists in this country struggle to make a living as it is, most will not be able to foot the bill of hefty legal fees. The only winners will be lawyers and big tech companies."

The impact this Bill could have on the economy is significant. An economic impact study which was commissioned by PASA indicates that the publishing sector alone would shrink by 30% with over R3-billion in losses and job losses would be inevitable. More broadly, Global financial institutions use intellectual property rights as a measure of competitiveness, and this Bill would further erode the perception of South Africa. The bill has not had a creative and cultural industries impact assessment study conducted to see what effect it will have in this area.

First sale doctrine

The impact of the first sale doctrine is an untested imported clause. The effect of inserting this section is that the act of assigning copyright is considered to constitute a first sale, thus exhausting the rights in the work concerned. As such, the provision legitimizes the parallel importation and introducing of international exhaustion 'rights'. We will not be able to sell our work and it shall be freely available to all.

The primary aim of technological protection measures (TPMs) is to reduce infringement of copyright works. These protective measures are critical now more than ever as the audio-visual world migrates to online platforms and more films are offered online and become susceptible to illegal downloads and streaming. This bill will effectively eradicate any protection for South African creators world-wide. Enabling a digital colonialism as South African creators will effectively be made redundant if their work is freely available on any digital platform raises questions on the value-gap which has been ignored.

The Bill has already been passed by the National Assembly and is now sitting with the National Council of Provinces (NCOP), which offered only five days in February for public submissions on the Bill. The NCOP is due to vote on the Bill on 20 March 2019.

"The Bill is a complex piece of legislation and there is an expectation that these members would have allowed for enough information, consultation and time to properly apply their minds as they are legally mandated to do," said Mpuka Radinku from PASA.

The Coalition urges any interested or affected parties to voice their concern to the rushing through of this Bill, by e-mailing

copyright.coalition@yahoo.co.za.

Download a PDF of the [Copyright Amendment Bill here](#).

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