

THE NEED FOR LIMITATIONS & EXCEPTIONS FOR LIBRARIES, ARCHIVES

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To fulfill their mission in the 21st century, libraries and archives must engage in a wide variety of activities, including collection development, lending, preservation and replacement, provision of user copies, production of accessible format copies, provision of internet resources to users and the support of research, education and innovation¹. Many libraries, including academic and public libraries, are also engaged in teaching, literacy programmes and copyright awareness training, which have now become part of their services. Legal deposit libraries and official publications depositories are mandated by the Legal Deposit Act. They collect, catalogue, make accessible and preserve our cultural heritage for future generations.

The current copyright law dating back to 1978 is outdated and unbalanced, and has become a barrier to the provision of these important services. For this reason, copyright exceptions are necessary for libraries and archives to function, particularly in the context of a developing country, in a digital world. The educational and library sectors have been calling for fair and balanced copyright laws for 17 years. Thankfully, two Task Teams under the auspices of the SA Vice Chancellors Association (SAUVCA) and the Committee of Technikons (CTP) at the time (and lead by Denise Nicholson from Wits University) successfully challenged and stopped more restrictive proposals to amend the copyright law going through in 1998 and 2000. We now look forward to the adoption of more fair and appropriate limitations and exceptions being passed in the new Bill. Those included in the 2017 Bill are welcomed, but there are concerns about the closed fair use and quotation provisions.

Tertiary institutions are paying millions of rands each year to mainly foreign rights-owners, via DALRO, to use copyrighted works, for teaching purposes. Many of these articles are written or edited by their own academic staff. Publishers receive the copyright fees, not the authors. Postgraduates have to apply for permission to include copyrighted works in their research reports, which go onto open institutional repositories, yet this should fall under fair dealing. A great deal of knowledge is locked behind paywalls, where authors do not benefit from their own works, and international publishers make huge profits on selling the content back to the institutions that produced the knowledge in the first place, and other institutions and organisations around the globe.

We therefore commend the DTI for its initiative in trying to balance copyright law in its new Bill and for introducing fair use and various limitations and exceptions facilitate access to information. It should be noted that the laws of many developed countries, including the United States, UK, Australia and New Zealand, and EU member states already have similar or far more exceptions than we, a developing country, require today. Fair use contributes billions of dollars to the creative industry in the USA¹. We hope it will do the same in South Africa.

¹ <http://infojustice.org/archives/38282>

It should also be noted that South Africa, as a very active member of the African Group at WIPO, strongly supports proposals for an international instrument on limitations and exceptions for libraries, archives, education and for persons with disabilities. The Latin American and Caribbean Group (GRULAC) and many countries in the Asian Group also support the African Group's initiative. IFLA, the global voice of the library and information profession, representing libraries in 150 countries, also has a proposal on the WIPO agenda for limitations and exceptions for libraries and archives. Electronic Information for Libraries (EIFL) with IP experts around the globe compiled a Model Copyright Law, expanded on WIPO's model law for developing countries, which is an excellent resource. I am happy to see some of these provisions have been included in the new Bill and hope they will be adopted into the final Copyright law.

Librarians and archivists are very active at WIPO with regard to copyright and access issues, and are making a real difference by bringing important issues to the international community at WIPO. I had the privilege of being the first librarian from a developing country to attend and present a statement at a WIPO General Assembly. More and more librarians from African and other developing countries are attending WIPO meetings to contribute in these important debates.

The crucial role of libraries and archives, more so than ever before, is recognised at an international level, including WIPO. International copyright conventions and Treaties also provide for limitations and exceptions to the exclusive rights of authors, but South Africa has long been reluctant in amending the law to accommodate these benefits for our nation.

Libraries and archives also recognise the principles of our Constitution and the African Cultural Renaissance, which highlight the importance of access to information and education, creativity and promotion of cultural goods in our country and further afield. They also support the principles of the Cape Town Declaration, signed by South Africa and 12 other African countries on 14 August 2015, which include the commitment to encourage the implementation of fair and balanced copyright laws to facilitate access to information for all.

Authors, creators, publishers, artists, filmmakers, researchers, educators and technological innovators all need to use libraries and archives, as do school children, politicians, lawyers, judges, government officials and others from all walks of life. Libraries promote authors and publishers by purchasing and collecting their works; storing them; cataloguing them to make them accessible; exhibiting them; promoting new authors; and preserving their works for perpetuity, at considerable cost. Without libraries and archives, they would not be able to innovate and create new works and products.

Some scenarios where copyright is a barrier:

Imagine if an author wanted to use material from another author to create a new work; or a filmmaker needed extracts from other films; or playwrights or scriptwriters wanted to adapt someone else's material for non-profit educational programmes; or health workers wanted to share their publications with rural doctors who do not have access to e-databases or expensive subscription journals. Imagine if scientists wanted to share their research findings on an open access platform; or art researchers wanted to photograph art on public walls; or a teacher wanted to create a study-pack for distance learners or poor students who cannot afford to buy textbooks; or a minister wanted to share hymns with his congregation. Imagine if a librarian wanted to convert VHS tapes to DVDs because of obsolete technology; or a blind person needed to access material by converting it to Braille; or a deaf person needed subtitles and more visual formats for learning purposes. Imagine if a historian wanted to use videos and photographs to commemorate a historical event on a public campus; or a school wanted to show a film to pupils for critical analysis for literature

studies.

These are all very reasonable acts, not so? But in our current situation, they would not be able to do these activities, without prior permission from rights-owners and in most cases, pay a fee. Why not? Because our current copyright law lacks appropriate limitations and exceptions! It is very restrictive and is a barrier to access to information and knowledge and contradicts the principles of our Constitution and even international Copyright treaties which permit limitations and exceptions for various stakeholders and uses. The US and many other developed countries have for many years enjoyed far more flexible copyright laws than South Africa does, despite South Africa being a developing country with serious socio-economic problems. Without open fair use and flexible copyright exceptions, our nation will not be able to meet its constitutional obligations, nor the Millennium goals, nor the commitments and laid down in the National Development Plan.

Authors, creators and researchers need a rich, vibrant public domain and appropriate limitations and exceptions to be innovative, to quote from others' works, and to create new works, and to contribute to new knowledge, our cultural heritage and ultimately, our economy and social transformation. That is what a balanced copyright law does. We therefore hope this will become a reality in our copyright law soon.

Libraries and archives provide services to meet the information needs of our people for various purposes, including personal and socio-economic development, career development, political, security, health, civil, and many other activities. They also provide the appropriate resources and support for research, education, creativity and innovation, publishing, cross-border resource-sharing and many more important activities, for the education, transformation and development of our nation.

The role and global impact of libraries and archives have changed tremendously. They are far removed from the old perception of 'stamping books' which was incorrect in the first place. Librarians are key players in the knowledge chain. They are leaders in print and digital information collection, management and dissemination, as well as in preservation, data management, knowledge production, literacy development, and other key professional activities. The Web may give users thousands of hits, but libraries and archives give relevant and on-the-spot information.

As our country grows a large middle-class society, the pressure on libraries and archives to produce relevant information and knowledge is ever-increasing. Copyright law has severely hampered the services that libraries and archives provide, or want to provide to their users. It has prevented libraries and archives from sharing information to poor and rural communities who do not have proper services. In 2015, I visited a poor community in Groendal which had a container as a library. Before, children had to walk 3 kilometres to the nearest library. I also visited Klapmuts, both within the Municipality of Stellenbosch. Before the school library was built in Klapmuts in 2011, which also serves as a public library, only 30% of their pupils finished matric. Since the library was opened, the figure has increased to 70%. This speaks volumes about the importance of libraries and their outreach programmes to those who cannot afford basic amenities, let alone high books prices, copyright fees, data and digital content.

Researchers predict internet use on mobile phones in Africa will increase 20-fold in the next five years – double the rate of growth in the rest of the worldⁱⁱ. In Africa, mobile phones are used for online activities that others normally perform on laptops or desktop computers. Declining prices of handsets and data, along with faster transmission speeds, mean internet services, social media and access to information can reach both the growing African middle class and the remotest rural areas, where villagers often find ingenious

ways of keeping phones charged. Consumers in South Africa and a few other African countries are increasingly using video and media services on newly affordable smartphones. This way of making information accessible opens up exciting possibilities for libraries and archives to do so much more to improve access to knowledge, education and to accelerate socio-economic development in South Africa. To do this, libraries and archives need open fair use and appropriate limitations and exceptions. Currently, they are hamstrung in many of their outreach programmes and resource-sharing projects because of restrictive copyright laws. Digital resource-sharing is the key to educational transformation and social upliftment in our country. Balanced copyright laws, open access material and open educational resources will help us get there!

I hope that Honourable members, DTI and DAC officials, researchers and others here today acknowledge the crucial and empowering role that libraries and archives play in their lives, and in the lives of all South Africans. I trust you will support the inclusion of open fair use, as well as appropriate limitations and exceptions for libraries, archives, research, education and persons with disabilities in the new Copyright Bill. It is also crucial that South Africa ratifies the Marrakesh Treaty for Blind and Visually Impaired persons which was adopted by WIPO member countries, and strongly supported by South Africa at the time, on 27 June 2013 (four years ago!)/. This will allow reciprocal cross-border resource sharing in accessible formats with other signatory countries.

Thank you for this opportunity to speak to you today,

Denise R. Nicholson BA H DipLib (UNISA); LLM (WITS)
Scholarly Communications Librarian, University of the Witwatersrand, Johannesburg
Member of IFLA Committee on Copyright and Other Legal Matters (CLM), NCLIS, DAC
Legal Deposit Committee, and Library and Information Association of South Africa (LIASA)
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ⁱ Jonathan Band's document on core L & Es for libraries.

ⁱⁱ <http://www.theguardian.com/world/2014/jun/05/internet-use-mobile-phones-africa-predicted-increase-20-fold>