



Country Report South Africa

Annual Report to the IFLA CLM
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Copyright

Revision in Copyright law

Projects highlighting inadequacies in the current SA copyright law:

The Department of Trade and Industry (DTI) has not amended the Copyright Law substantially, particularly with regard to education and libraries, since 1978. In recent years, there have been two important research projects done in South Africa to highlight the inadequacies in the current copyright law. The Open Review of the SA Copyright Act, a project of the Shuttleworth Foundation, published its final report in August 2009. This Report includes recommendations on exceptions and limitations, orphan works and strengthening the public domain and parallel import.

The second project, the African Copyright & Access to Knowledge (ACA2K) Project, for which Denise Nicholson served as Policy & Dissemination Advisor, was supported by the Canada's IDRC and South Africa's Shuttleworth Foundation, and managed by the LINK Centre at the Wits University Graduate School of Public & Development Management (P&DM) in Johannesburg, South Africa. It involved empirical research in eight African countries: Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda. Country reports for each study country are available on the website: www.aca2k.org. The South Africa country report is available at http://www.aca2k.org/attachments/154_ACA2K%20South%20Africa%20CR.pdf and the Executive Policy Brief at

http://www.aca2k.org/attachments/154_ACA2K%20South%20Africa%20EPB.pdf.

An Open Access Book entitled "*Access to Knowledge in Africa: The Role of Copyright*", outlining the ACA2K research results was launched on 31 July 2010 at the Cape Town Book Fair. It was published by UCT Press under a Creative Commons licence, and can be found at http://www.aca2k.org/attachments/281_ACA2K-2010-Access%20to%20knowledge%20in%20Africa-s.pdf.

The African Commons Project (TACP) launched a petition in early 2010, in cooperation with South Africa's National Consumer Forum, calling on the DTI to conduct a "consultative, development-focused Copyright Review."

Attempts to include Traditional knowledge works in the Copyright Act:

Based on the November 2004, Indigenous Knowledge Systems (IKS) Policy, the DTI published the Intellectual Property Amendment Bill (known as the TK Bill) in the Government Gazette in May 2008 for public comment. This Bill proposed to include traditional knowledge works as a category of protected work and to amend intellectual property legislation accordingly. This required amendments to be made to the Performers' Act of 1967; the Copyright Act of 1978; the Trade Marks Act of 1993 and the Designs Act of 1993.

Stakeholders across the board, including the library and tertiary sectors, submitted objections and recommendations for changes to be made to the Bill, before it was presented to Parliament. The DTI held various public hearings around the country during 2008 and 2009 and again strong objections were raised and recommendations made by IP lawyers, librarians, academics, musicians, rights organisations and other stakeholders. However, the DTI presented the TK Bill, virtually unchanged, to the Portfolio Committee for Trade and Industry in May 2010. Apart from not including any limitations and exceptions for research, education, libraries and persons with

sensory-disabilities in the Copyright Act, it fails to address a number of key issues and queries that stakeholders across the board have raised about the Bill, e.g. vague definitions for traditional knowledge works and indigenous communities, problem clauses, ownership by a National Trust, fixation issues around folklore, and many others. The results of a Regulatory Impact Assessment (RIA) of the TK Bill, commissioned by the Presidency and the DTI during 2009, have also not been made public. Parliamentary public hearings were scheduled for May, 2010, but they have been postponed a number of times and those scheduled for mid-August are likely to be postponed again. On 27 and 28 July 2010, hearings were held in Parliament with members of NEDLAC (the National Economic Development and Labour Council), which resulted in strong criticism of the Bill and the process taken by the DTI. The DTI has now decided to review the Bill again before it proceeds any further.

The Department of Science & Technology has confirmed that once the TK Bill has been passed, they will introduce 'sui generis' legislation to address preservation and other issues relating to traditional knowledge in South Africa.

Other IP legislation

The Proclamation of the Intellectual Property Rights from Publicly Financed Research and Development Act, 51 of 2008 was published in the Government Gazette Vol.541 No.33422 on 30 July 2010, and its accompanying regulations were published in the Government Gazette Vol. 542 No. 33433 on 02 August 2010.

WBU's Treaty for the Visually Impaired (TVI)

On 30 November 2009, the South African National Council for the Blind hosted a workshop on the 'Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons' (referred to as the 'TVI'). Delegates represented various organisations servicing the blind and visually impaired communities of South Africa, as well as stakeholders from the private and public sectors, including government departments and academia.

The TVI was adopted by representatives and supporters of the blind and visually impaired communities present. A Declaration to this effect was drafted and sent to the DTI and other relevant Government departments. The Publishers' Association of South Africa (PASA) participated in this workshop but submitted an Annexure to the Declaration, stating that they did not support the TVI.

The SA Council for the Blind hosted a second workshop on 20 May 2010 at the National Library of South Africa in Pretoria, which was attended by officials from a number of Government departments, including the Dept. of Trade & Industry, Dept. of Science & Technology, Dept. of Arts and Culture, Department of International Relations and Dept. of Education, as well as members of the DAC Legal Deposit Committee, librarians, authors, publishers, academics and organizations servicing the disabled. This purpose of the workshop was to obtain a mandate to negotiate with government on the South African stance on the proposed International Treaty on Copyright Limitations and Exceptions for Blind, Visually Impaired and Other Reading Disabled Persons (TVI). There was general consensus that the TVI should be supported at WIPO.

Since the introduction of the African Group's TVI Plus Proposal at WIPO, there have been various discussions about the TVI and TVI Plus, by the SA National Council for the Blind's Copyright Task Group (Denise Nicholson is a member of this Task Group). Jace Nair, the Director of the SA National Council for the Blind, participated at WIPO SCCR 20 in Geneva and he reported on the four different proposals on the table, i.e. the US, the EU, the African Group and the WBU's proposals. He reported that the African Group plan to organize workshops in Africa to discuss the TVI Plus proposals and to establish a way forward at WIPO. The SA National Council for the Blind planned a workshop with the DTI on 5 August 2010 to discuss the TVI and TVI Plus options, but the workshop has had to be postponed until later in August 2010.

IP Policy Framework for South Africa

In late 2008, Denise Nicholson and a number of other stakeholders with copyright expertise were invited by the DTI to join its research task team to review research done on limitations and exceptions by the University of Pretoria and to assist with drafting proposals for amending the Copyright Act and Regulations. The inaugural meeting has yet to be convened. In the meantime,

the DTI has drafted an Intellectual Property Policy Framework for South Africa and will be publishing this sometime in September 2010 for public comment. It will then commence drafting proposals to amend the Copyright Act No. 98 of 1978 (as amended), which are likely to be published for public comment during the first half of 2011.

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