

6 July 2021

Portfolio Committee on Trade & Industry Parliament of SA

I write today on behalf of Wikimedia South Africa, the volunteer driven non-profit chapter for South African Wikipedia (the free online encyclopedia) editors and free knowledge contributors. We are writing to express our support for the Copyright Amendment bill as it codifies both freedom of panorama (clause 14) and fair use (clause 13). With regards to the sections that are currently open for commentary we would like to voice our support for clause 13; sections 12A-D.

One of the most important inclusions for free knowledge in this bill is the codifying of fair use in South Africa. Fair use has been adopted by countries around the world to empower their creators, educators, journalists, and innovators. It also allows for the use of copyrighted work for certain specific social beneficial purposes like criticism, reporting, and education.

Fair use is extensively used in other countries; most notably the United States where it has expanded the rights of creators of novel works to a) create new works, b) engage in social commentary, c) expand access to education, and d) develop new employment creating industries and technologies. For many years now citizens of countries that enjoy the provisions of fair use, such as the United States or Singapore, can freely use works in both prosocial and economically expanding ways. Such as investigative reporters using primary sources to tell their stories; artists building on top of the work of prior generations to create new creative works; new technologies and industries being created through the opportunities offered by building on existing works in a way that doesn't negatively impact the original author's rights.

Paradoxically a lack of fair use in our laws only serves to further a status quo where the rest of the world can freely use, reuse, build off of and benefit from the work of South African creators, but South Africans cannot do the same. In short, without it South African creatives are exposed to all the limitations of restrictive copyrights without being able to enjoy any of the rights people the rest of the world enjoy.

On Wikipedia, fair use plays an important role in contextualizing facts, and illuminating knowledge. At Wikimedia South Africa, we want South Africans to be able to share their knowledge with the world, and fair use is an important part of that.

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We are very happy to see that the new bill includes provisions which codify freedom of panorama in South Africa. Freedom of panorama is a copyright principle which allows for the photographing of artistic and architectural works in public spaces. Currently in South Africa, taking or sharing photographs of public spaces which contain statues or memorials are technically in violation of the author of that work's copyright and could result in a lawsuit. This means that many markers of South Africa's vibrant and important history legally cannot be shared by its own citizens online. Worse, because copyright lasts 50 years after the death of the author, no post-apartheid statues or monuments may be photographed and shared online legally in South Africa, leaving a literal blind spot in our nation's visual history online. As Wikipedians, we understand the importance of documenting our history and sharing South Africa's rich culture with the world, which is why we believe freedom of panorama is such an important inclusion in South Africa's amended copyright law.

At Wikimedia South Africa, we are proud to share our knowledge of South Africa and its people with the world. The Copyright Amendment Bill will be a big step toward enabling Wikimedia South Africa and all South Africans to fully access, share, and participate in knowledge online. Wikimedia South Africa fully supports the passage of the Copyright Amendment Bill in its current form.

Yours sincerely,

Douglas Ian Scott
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