



COMMENTS OF THE LIBRARY COPYRIGHT ALLIANCE ON SOUTH AFRICAN COPYRIGHT AMENDMENT BILL, 2015

The Library Copyright Alliance (LCA) consists of three major library associations—the American Library Association, the Association of Research Libraries, and the Association of College and Research Libraries. These three associations collectively represent more than 350,000 information professionals and over 100,000 libraries of all kinds throughout the United States. An estimated 200 million Americans use these libraries more than two billion times each year. These libraries spend over \$4 billion annually acquiring books and other information resources. LCA welcomes the opportunity to comment on the draft of the South African Copyright Amendment Bill, 2015.

LCA strongly supports the adoption of a flexible fair dealing clause similar to that adopted in Singapore and Malaysia. Libraries in the United States have benefited greatly from an open and flexible fair use provision like the fair dealing provision in Singapore and Malaysia. Attached please find a White Paper prepared for LCA by the Samuelson Law, Technology & Policy Clinic at the University of California, Berkeley School of Law, which details how fair use has helped libraries in the United States to achieve their mission. LCA believes that a flexible fair dealing clause would similarly benefit libraries in South Africa, and by extension the millions of students, creators, consumers, and businesses they serve.

Flexible fair dealing or fair use provisions have been adopted by legislatures around the world in recent years. In addition to Malaysia and Singapore, flexible and open exceptions have been enacted in Korea, Hong Kong, Israel, and the Philippines. Adoption of such provisions has not led to legal uncertainty nor to a dramatic increase in copyright litigation. The United Kingdom recently decided not to pursue a fair use provision in its copyright law, but the basis for this decision was the legal opinion that fair use would be incompatible with the UK's obligations to the European Union. Fortunately, South Africa does not have such constraints, and is free to adopt the exceptions that are in the best interests of its citizens.

It should be noted that copyright owners in the United States routinely rely on fair use as a defense when they are sued for copyright infringement. In recent years, Fox News Network, the National Football Leagues, Reed Elsevier, and Sony Pictures have all claimed that fair use permitted actions alleged by rights holders to infringe. Ben Sheffner of the Motion Picture Association of America wrote that the MPAA's "members rely on

the fair use doctrine every day when producing their movies and television shows.”¹ Several years ago, Fritz Attaway, then a senior MPAA executive, explained to a National Academies review that the “beauty of fair use is that it is a living thing . . . like our Constitution . . . that can adapt to new technology.”² Sandra Aistars, CEO of the Copyright Alliance, observed that fair use “is a doctrine all artists and creators depend on daily, and something that we should celebrate and practice as an integral part of World IP Day.”³ In recent testimony before Congress, Aistars asserted that “[w]e support fair use.”⁴ She stated that “fair use can foster creativity by enabling independent creators to use copyrighted works in ways that produce new cultural contributions that would not be possible otherwise.” She added, “creators of all types regularly rely on fair use. Copyright Alliance members in particular have an extensive history of defending the doctrine in court.”

Additionally, earlier this year, the U.S. Copyright Office released a fair use index designed to provide the public with searchable summaries of major fair use decisions. In the press release announcing the index, Danny Marti, the new U.S. Intellectual Property Enforcement Coordinator, stressed that the publication of the index “serves to reemphasize the significance of this right as part of our culture.”⁵ Mr. Marti further recognized the importance of fair use to creativity, stating that “it is the combination of a strong copyright system with a right of fair use that encourages creativity, promotes innovation and respects our freedom of speech and expression.”

In short, adoption of a fair use provision would promote, and not hinder, creators and creativity in South Africa.

September 15, 2015

¹ <http://www.mpa.org/mpaa-and-fair-use-a-quick-history/>.

² <http://www.project-disco.org/intellectual-property/041715-mpaa-opposes-fair-use-even-as-its-members-rely-on-it/>.

³ <https://copyrightalliance.org/2012/05/happy-fair-use-day#.VfMktp1VhBc>.

⁴ https://www.copyrightalliance.org/sites/default/files/copyright_alliance_scope_of_fair_use.pdf.

⁵ <https://www.whitehouse.gov/sites/default/files/omb/IPEC/copyright-fair-use-index.pdf>