

SOUTH AFRICAN COPYRIGHT AMENDMENT BILL B13F-2017

SOME BENEFITS OF FAIR USE

Fair use promotes human rights.

Copyright laws with insufficient exceptions for modern digital uses conflict with rights to free expression, education, and access to culture, but also to creativity and innovation. See [UNESCO, Approaching Intellectual Property as a Human Right](#).

Fair use is more flexible and open than Fair Dealing, and is future-proof, so that laws do not have to be amended every time there are new technological advancements. All users of information, whether they are producers, publishers, authors, creators, educators, students, schoolchildren, professionals or non-professional, librarians – in fact, everyone, needs to access information and use, re-use or remix information for various purposes.

Fair use promotes innovation and creativity.

Fair use allows new technologies that cannot be foreseen by the legislator. When the first copyright laws were written, they did not imagine the VCR, CDs, DVDs, much less the Internet. The SA Copyright Act predates the birth of the Internet by 5 years! Flexible fair use systems have been able to accommodate technological change by permitting a new technology developer to know their use can be defended from any challenge as long as it meets the 4-factor test of fairness.

Fair Use will benefit teaching and learning.

Fair Use and the specific exceptions for education and academic activities will enable educators, school children and tertiary students to access, use or share a wide range of materials lawfully, especially in the digital space. Fair use does not permit reproduction of full books and other copyright works. In a few specific instances, such reproduction is permitted as per Section 12D(4) of the Bill, which also enables educators to provide a wider range of resources from various sources to be included in study-packs or course packs for non-commercial educational purposes.

Fair Use will benefit people with disabilities.

Fair Use and the specific exceptions for people with disabilities in Section 19D of the Bill will remedy the discrimination against people with disabilities in the current copyright law. It will provide access to materials that they have previously not been able to access, without having to apply for copyright permission and pay high fees to convert works into accessible formats. The exceptions for education, academic activities, and libraries and other information services, will also enhance access for people with disabilities.

Fair use will benefit researchers.

Fair use is flexible, open-ended, and future proof. It prevents the stifling of research and criticism. It will enable researchers to access a far wider range of materials, especially in the digital space. It will also enable computational analysis and text and data mining, which are inherent in digital research. Researchers will be able to apply fair use when using third-party material in their research reports, journal articles and other publications, and in presentations and lectures.

Fair use will benefit libraries, archives, museums, and galleries.

The current copyright law has no exceptions for museums and galleries. The Bill includes these entities in Section 19C, which will empower libraries (including legal deposit libraries), archives, museums, and galleries to carry out their statutory mandates to provide more holistic services to their users from all walks of life. They will now be able to engage in preservation, digitisation and digital curation, format-shifting, replacement of lost, damaged, or stolen works, and conversions from obsolescent works to new technologies, as and when they change. They will be able to provide information, images, recordings, news-clippings or other media for historical or commemorative events and exhibitions for non-commercial educational purposes. They will also be able to advance open access through assisting scholarly authors to deposit copies of their works in institutional repositories and digital research archives. This will ensure their collections and our cultural heritage and documentary records, are preserved and made accessible now and for future generations.

Fair use will benefit creators, innovators, and inventors.

Fair use helps creators, innovators, and inventors to access and lawfully use copyright works that will inspire or motivate them to create new works without having to apply for copyright permission each time. The exceptions for education, academic activities, libraries and other information services, and those for people with disabilities, will also benefit them should they also be students, educators, researchers, or persons with disabilities.

Fair use will benefit publishers.

Applying fair use in publishing encompasses a broad range of activities, especially in the editorial process. Publishers often need to obtain copyright permission to include excerpts, images, news-clips, or other media in their publications. Fair use will enable them to lawfully use other works for commentary, quotation, criticism, review, parody, academic analysis and scholarly critique, as well as for marketing and other promotional purposes. Publishers can interpret, assess, and navigate the nuances of fair use, ensuring their practices are both legally compliant and ethically sound, thereby fostering a rich and diverse publishing landscape. See: [The Complete Guide for Authors and Publishers](#)

Fair use factors will help all users of information

All users, custodians, creators and producers of knowledge or cultural works use others' works for inspiration, quotation, research, etc. In fact, in the digital space, the distinct lines between creators and users have become blurred. Fair use is not carte blanche for copying anything and everything, nor a piracy tool to infringe copyright. It has been positively tested in the US and about 12 other countries. All four factors have to be considered, when using, re-using, remixing, or transforming copyright works. The use must always be fair. Any use of a work that could substitute for the use of the original in the market would need to be licensed. This is a simple understandable test already applied by South African courts under the current fair dealing standard.

The Bill provides for any party to submit claims of alleged infringement to the Copyright Tribunal for resolution. This will level the playing fields for those who cannot engage in costly litigation through the courts. There are many useful online legal resources available to South African courts, when necessary, whilst they develop their own jurisprudence to guide stakeholders how to interpret and apply fair use. Once the Bill is enacted, nationwide training programmes will be necessary to educate everyone on how to apply fair use and make use of the useful exceptions for various purposes.