



**ZIMBABWE UNIVERSITY LIBRARIES CONSORTIUM**  
C/O UNIVERSITY OF ZIMBABWE LIBRARY  
P.O. BOX MP45, MT PLEASANT  
HARARE  
TEL: +263242303211 ext. 12001  
www.zulc.ac.zw



Ms Natasha Munjoma, Consultant  
Zimbabwe Intellectual Property Office (ZIPO)  
Ministry of Justice, Legal and Parliamentary Affairs  
Century House East, 38 N. Mandela Avenue, Harare

cc: Mr. Willie Mushayi, Deputy Registrar: Companies and Intellectual Property  
Ms Kathy Matsika, University Library Director, National University of Science & Technology

By email: natashamunjoma@gmail.com, donsankomo@gmail.com, mathiasmuzawazi@gmail.com,  
wmushayi@gmail.com, katherine.matsika@nust.ac.zw

15 February 2021

**Re: Copyright and Neighbouring Rights Amendment Bill 1st Draft 24/09/20**

Dear Ms Munjoma,

The Zimbabwe University Libraries Consortium (ZULC) and our partner EIFL (Electronic Information for Libraries) appreciate the opportunity to comment on the Copyright and Neighbouring Rights Amendment Bill 1st Draft 24/09/20.

We would like to first make two general comments.

First, ZULC would like to request inclusion as a stakeholder in ZIPO copyright consultations.

Libraries are stakeholders in copyright debates. Copyright regulates how information is accessed and used, thus libraries have a strong interest in copyright law and its development. For example, copyright affects library responsibilities of national importance such as preserving Zimbabwe's cultural heritage, providing access to learning materials for education and research, and producing information in formats that can be accessed by people with disabilities to foster an inclusive society. The library community has a distinct role as a stakeholder representing the public interest in copyright, and we believe that ZULC can make a positive contribution to copyright debates.

We would like to ask that ZULC be included in ZIPO's stakeholder list, and that we are notified of relevant consultations and communications.

Second, the Amendment Bill is a missed opportunity to deal with some broader issues in copyright.

An objective of the review is to come up with an effective legal framework to unlock the potential of the creative sector. Copyright laws around the world are being updated and modernized including in Africa, for example, in South Africa<sup>1</sup>, Botswana, Kenya and Malawi. The COVID pandemic has

---

<sup>1</sup> South Africa Copyright Amendment Bill [https://libguides.wits.ac.za/ld.php?content\\_id=45613747](https://libguides.wits.ac.za/ld.php?content_id=45613747)

highlighted the need for copyright rules that support online access and remote learning, and it has shown that countries with flexible copyright laws are better equipped for emergency situations.


In this context, the review might have used the opportunity to tackle some broader issues for example, to increase the flexibility of the fair dealing provision, to update provisions on the making of research copies by libraries, and to fix the library exception that allows document supply of only unpublished works.

We hope that these important issues can be addressed in the near future. In the meantime, ZULC would be glad to meet with ZIPO to share the library perspective, and to discuss ways in which we may cooperate.

Please find our comments on the Copyright and Neighbouring Rights Amendment Bill in the attached Annex.

Please do not hesitate to contact us if there are any questions.

Yours sincerely



Dr. Rosemary Maturure  
Chair ZULC  
University Librarian, Africa University  
Email: <rosenyama@yahoo.com>



Teresa Hackett  
EIFL Copyright and Libraries Programme Manager  
Email: <teresa.hackett@eifl.net >

**The Zimbabwe University Libraries Consortium (ZULC)** is a membership organisation of 20 universities, and 15 affiliate members from research and college libraries. We provide access to a wide range of scholarly e-resources for members, and leadership in access to knowledge in support of human capital development. ZULC contributed to the development of a draft national open access policy<sup>2</sup>, and our representatives have participated in discussions at the World Intellectual Property Organization (WIPO) on copyright exceptions for the benefit of libraries and archives, and education and research<sup>3</sup>.

**EIFL (Electronic Information for Libraries)** works with libraries to enable access to knowledge in developing and transition economy countries in Africa, Asia Pacific, Europe and Latin America. The EIFL Copyright and Libraries programme advocates for a fair copyright system, and supports librarians to become advocates for access to knowledge. More information: [www.eifl.net](http://www.eifl.net)

<sup>2</sup> In cooperation with the Ministry of Higher & Tertiary Education, Science & Technology Development (MHTESTD)

<sup>3</sup> For example: WIPO Standing Committee on Copyright and Related Rights (SCCR/39), Geneva, 21-25 October 2019; WIPO Regional Seminar on copyright limitations and exceptions for libraries, archives, and education in the African region, Nairobi, 12-13 June 2019.

## ANNEX

### Zimbabwe University Libraries Consortium (ZULC)

#### Comments on the Copyright and Neighbouring Rights Amendment Bill 1st Draft 24/09/20

Our comments relate to implementation of the Marrakesh Treaty for persons with print disabilities, and the protection of technological protection measures (TPMs).

#### 1. Implementation of the Marrakesh Treaty for persons with print disabilities

- a) New section 44A(1)(c) inadvertently omits permitting an authorised entity to supply an accessible format copy to a print disabled person in Zimbabwe.

Section 44A(1)(c)(i) permits an authorised entity to supply an accessible format copy to another authorised entity. 44A(1)(c)(ii) permits an authorised entity to supply an accessible format copy directly to a print disabled person in another Marrakesh country. But nothing in 44A permits an authorised entity to supply an accessible format copy to a print disabled person in Zimbabwe.

This oversight can easily be corrected by making the following amendment to 44A(1)(c)(ii): “directly to a person who is visually impaired or print disabled in Zimbabwe or in another Contracting Party....”

- b) In section 44A(2): “entitiy” should be “entity.”
- c) The second sentence of 44A(4) repeats the Berne Three Step Test (“TST”). Inclusion of the TST is unnecessary; any exception that complies with the Marrakesh Treaty by definition is compliant with the TST. Moreover, inclusion of the TST here is confusing; authorised entities in Zimbabwe may feel that in addition to meeting the other requirements of Section 44A, they independently need to determine that their activities comply with the TST.
- d) ZULC thinks that people with print disabilities should be able to read material in all formats, whether print or electronic. For material that is ‘born digital’, this is usually subject to terms in licences. To help ensure the right to read regardless of the format, ZULC recommends adopting a provision in Section 44 that would set aside any contract term that prohibits the making and distribution of an accessible format copy.

For example, the following language be added as 44A(6) (based on section 31F(8) of the UK Copyright Act): “To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section would not infringe copyright, that term is unenforceable.”

## **2. Protection of technological protection measures (TPMs)**

- a) In Section 60A(4), the Minister is given authority to adopt exceptions to the TPM provision. We recommend the adoption of TPM exceptions in legislation, at least for activities permitted under Section 44A (print disabilities), and Section 26 (libraries and archives). Article 7 of the Marrakesh Treaty states that Contracting Parties shall ensure that TPMs do not prevent beneficiaries from enjoying the exceptions provided for in the treaty.

February 2021