

Access to Knowledge Civil Society Coalition

Submission on the Draft Policy on Intellectual Property of South Africa by the Association for Progressive Communications on behalf of the Access to Knowledge Civil Society Coalition

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Executive Summary

The commitments to development-oriented intellectual property policy, in particular the proposed changes to the patent system to ensure greater access to medicines, are welcome.

The policy addresses issues that affect the daily struggles of millions of South Africans. The A2K coalition therefore submits that as a national policy it must take into account the fundamental rights of South Africans. The lack of reference to fundamental rights and *Batho Pele* as the most important policy driver of Intellectual Property policy is cause for grave concern.

There are many important needs of South Africans that are not addressed by the current intellectual property laws, the 1978 Copyright Act and the 1978 Patent Act. The primary legislation is thus in urgent need of reform. The Access to Knowledge Coalition cannot address the full range of issues that require attention. Instead the coalition has focused on two urgent issues which must become priorities in the national Intellectual Property policy: provisions for sensory impaired persons, and fair use.

Exceptions are necessary to ensure that blind and visually impaired persons have access to reading materials in a technology-neutral way which operates in all environments, and without requiring the consent of any information intermediaries, whether search engines, internet service providers or other intermediaries.

The draft policy accepts in principle the need for fair use. But South African law does not currently specify an explicit fair use provision. The introduction of a fully fledged fair use provision into current South African copyright legislation will benefit teachers, learners, library users, software engineers, film makers, artists, writers and journalists. A fair use provision is a flexible, open-ended provision that enables courts to develop copyright law in a way that balances the rights of copyright holders and those who use copyright works to learn, to educate and to create new works, in a rapidly changing, technological landscape.

Legislative reform however is complicated by the many treaties by which South Africa is bound, not least the Berne Convention, Paris Convention and Trade Related Aspects of Intellectual Property agreement (WTO-TRIPS), including the so called three step test. A fair use provision that is substantially the same as the provision adopted in the United States, and currently being adopted or considered by other jurisdictions such as Australia and the United States, does not require any analysis to ensure it complies with international treaties because its compliance has already been established. Legislation that complies with the Marrakesh Treaty to enable access by the blind and visually

impaired also complies with international treaties.

Without appropriate provisions for blind and visually impaired persons and a flexible fair use provision, copyright legislation fails to fulfil the fundamental rights of South Africans and is open to constitutional challenge. These two reforms should be stated as urgent priorities in the national Intellectual Property policy.

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1. Access to Knowledge Civil Society Coalition

The Access to Knowledge (A2K) Civil Society Coalition is a coalition of civil society organisations determined to ensure and increase access to knowledge for South Africans. Members include the South African National Council for the Blind and the Association for Progressive Communications.

The Civil Society Coalition was formed in 2009 when the Coalition organised the Multi-Stakeholder Declaration on the South African Response to the WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons (TVI).

The coalition is committed to engaging with government to amend the South African Copyright Act of 1978 (drafted decades before the advent of a democratic government, the internet or widespread adoption of digital consumer devices in order to bring it in line with the principles of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and to include provisions that explicitly encourage blind, visually impaired and print-disabled people to access and contribute to the access to information and knowledge. The visually impaired and print-disabled community has long suffered from limitations on access to knowledge.

The coalition regards all measures that prohibit access to knowledge as out of place in a developing nation. The right to knowledge is the right to life itself and cannot be equated with any commercial rights. Therefore we call for measures, including appropriate exceptions and limitations, which in fact enable access to knowledge, to be included in all existing and proposed intellectual property legislation, i.e., the long term development of the nation should take precedence over short-term commercial interests. Read more below about two of the original Coalition members, the SA National Council for the Blind and the Association for Progressive Communications, as well as others who have joined the Coalition for the purpose of making this submission.

1.1 The South African National Council for the Blind

The South African National Council for the Blind (Council) is a non-government organisation (NGO) striving to meet the needs of all blind and partially sighted people in South Africa. Our services include rehabilitation, education and training, the provision of assistive devices, social and economic development and programmes promoting the prevention of blindness and the restoration of sight. Council comprises 95 affiliated member organisations which share Council's goal of providing services to visually impaired people across South Africa, approximately 90% of whom come from previously disadvantaged groups. We are committed to ensuring that blind and partially sighted people of all ages enjoy all rights promised by the Constitution of South Africa.

The South African National Council for the Blind is committed to ensuring the equality of visually impaired persons, in law and practice. As a result, Council has been working for changes to copyright and other laws which discriminate against visually impaired people. DAISY, an initiative that sets open standards for technology that enables adaptation of print works for use by print-disabled persons, envisions a world where people with print disabilities have equal access to information and knowledge, without delay or additional expense, in an accessible, feature-rich, navigable format which also benefits the wider community. DAISY SA, the South African National Council for the Blind, as well as many other stakeholders, have been actively involved at the World Intellectual Property Organisation on the Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons (TVI).

1.2 The Association for Progressive Communications

The Association for Progressive Communications (APC) is an international network and non-profit organisation founded in 1990 that wants everyone to have access to a free and open internet to improve lives and create a more just world. APC helps people get access to the internet where there is none or it is unaffordable, helps grassroots groups use the technology to develop their communities and further their rights, and works to make sure that government

policies related to information and communication serve the best interests of the general population, especially people living in developing countries.

APC is able to build the capacity of civil society actors involved at national level to engage at global level, and vice versa by supporting the participation of groups of people from civil society in global forums through creating spaces for learning and strategising. APC is uniquely placed to connect the strands of internet governance and human rights, particularly through national, regional and global mechanisms. Connecting the accountability of governments, and other stakeholders, across both human rights and issues of governance such as IP policy, is a key strategy for improving rights-affirming public policy.

www.apc.org

1.3 Freedom to Innovate South Africa (FTISA)

A primary objective of FTISA is to create and defend a legislative environment in South Africa which is conducive to the development of an indigenous software sector, one in which software innovation and production is allowed to flourish and the benefits of FOSS to the developing economy which relies heavily on information technology is protected. Such an environment can only exist with a complete, comprehensive, legally robust and affordable enforcement of the existing exclusion of computer software from patentable subject matter in South Africa. By acting effectively, imaginatively and constructively within our national context we intend also to contribute to the efforts of those with similar objectives internationally. www.ftisa.org.za

1.4 LINK Centre, School of Language Literature and Media, University of the Witwatersrand

The LINK Centre is the leading research and training body in the field of information and communications technology (ICT) policy, regulation and management in Southern Africa.

LINK focuses on capacity building in the broad ICT sector, including focus on the telecoms and broadcasting sectors, the broader ICT sector, e-government in the public sector and on the e-development arena. It offers quality training, applied research and advisory

services necessary to maximise the benefits of the Information Society and the Knowledge Economy. www.wits.ac.za/linkcentre

2. Submissions on Draft National Policy on Intellectual Policy 2013

The policy is wide ranging and necessarily cannot address every issue in advance, however the policy is deficient in failing to promote the fundamental rights set out in the Bill of Rights, as required by section 7 (2) of the Constitution.

The coalition welcomes the commitment of the draft policy to ensuring that intellectual property serves development and that intellectual property should empower all South African citizens. The coalition also welcomes the measures in the draft policy to increase access to medicines. The coalition endorses the civil society open letter to the Department of Trade and Industry (DTI) regarding the Draft National Policy on Intellectual Property (IP) of South Africa, 2013.

The coalition welcomes the inclusions in the Objectives of the policy of objective 6: “To improve access to IP-based essential goods and services especially, education, health and food.” This objective is appropriate because developing countries such as South Africa have significant numbers of people who are potentially vulnerable to threats to their health and well being, which can be the consequences of particular intellectual property policies, including some of the policies urged by certain corporate interests and developed country trade representatives. It is therefore the South African government's role to ensure that essential goods and services are not threatened by intellectual property policy or law.

The time period for consultation on the draft intellectual property policy did not permit the coalition to canvas every part of the policy. As a result where the coalition does not comment on the policy this should not be construed as an

endorsement.

The coalition supports a broad range of exceptions, limitations and other measures that increase access to knowledge, especially learning materials. However the coalition urges that fair use and measures to ensure access by blind, visually impaired and other reading disabled persons should be specifically stated to be priorities in the national Intellectual Property policy.

2.1 Priority Exemptions

Poverty, disability and language constitute barriers to access to knowledge, especially education, which disproportionately affect the developing world. No one creates in a vacuum, and thus appropriate measures that enable access to knowledge are necessary to enable South Africa to enable greater numbers of local creators. Appropriate measures to increase access to knowledge include but are not limited to exceptions and limitations. For example the authorisation of parallel import, a measure which is specifically permitted by WTO-TRIPS is another such measure.

2.1.1 Exemptions for the Blind and Visually Impaired

There is currently no reference to exemptions for the blind and visually impaired persons in the draft policy. This must be remedied immediately.

Policy Drivers for Exemptions for the Blind and Visually Impaired

Measures to assist the blind, visually impaired and reading disabled do not serve only one constituency, instead they serve as a powerful illustration of the need for suitable access to knowledge provisions. Measures to ensure access to copyright works by blind, visually impaired and other reading-disabled persons are constitutionally required to give effect to our fundamental rights to equality, education, to receive and impart information and to participate in cultural life. Far from conflicting with policy objectives such measures are necessary to achieve the policy objectives by ensuring that a significant number of South Africans are able to acquire the knowledge and skills to

contribute to the South African economy, by ensuring that the limited resources of the South African government and South African non-profit organisations to convert copyright works to accessible formats are appropriately utilised, and by in turn enabling South Africa to assist less-developed neighbours.

The potential economic contribution of those with disabilities is usually underestimated, however history records numerous gifted musicians and other creative persons who have made a lasting economic and cultural contribution. Both the South African Constitution and the UN Convention on the Rights of Persons with Disabilities and the Optional protocol in 2007, to which South Africa is a party, regard access to information for persons with disabilities as a fundamental human right. This right, when effectively implemented, enables the participation of a significant number of South Africans in the South African economy, and cultural life. Since copyright holders have simply failed to serve the large demand for works accessible to persons with disabilities, they cannot be said to suffer detriment by the introduction of appropriate measures to enable access.

The WIPO Development Agenda includes a commitment to agreement on minimum exceptions and limitations in copyright law to facilitate access to knowledge. While some developed countries have resisted international agreement on minimum exceptions and limitations in principle, the need for international harmonisation is clearly illustrated by the needs of the blind, visually impaired and other reading disabled persons. They require exceptions and limitations that allow for the production and distribution of versions of copyright works in accessible formats without permission. Developing countries, whether governments, citizens or non-profit organisations should not have to expend scarce resources on changing copyright works to suitable formats for blind, visually impaired and other reading disabled persons when that has already been done in other jurisdictions. To deal with this resource problem, exceptions and limitations should be harmonised, and import and export of works produced elsewhere under the exceptions and limitations authorised without requiring permission.

The Current System for making works accessible for the Blind, Visually Impaired and other Reading Disabled Persons

(The following section is excerpted from the Multi-Stakeholder Declaration South African Response to the WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons (TVI) Annexure A, pages 14-15)

The South African Library for the Blind (SALB) is a National Library for blind and visually impaired people in South Africa. It is the only institution of its kind not only in South Africa but also on the African Continent.

The SALB is mandated by Law to produce audio and Braille material within the existing South African Copyright legislation. It has built up a collection of 25,340 titles over the years. These titles are split 50/50 between audio and Braille formats.

The Library is currently servicing 3,600 members but it is projected that there may be as many as 600,000 people who may be potential members of the Library due to a visual disability.

Since 2008, the Library and the Publishers Association of South Africa implemented a Licence Agreement as well as an agreement to receive electronic files from publishers. This assisted the Library in speeding up its production processes. Prior to this arrangement the SALB requested and received on average copyright clearance for 300 titles per annum.

It takes around two to three months to produce an audio or Braille book from start to finish. Although this is a time-consuming process, the Library still adds on average between 600 to 700 audio and Braille titles per annum. The Library is therefore continuously looking for ways to speed up the production process in order to make more titles available.

Based on a Book Publishing Industry Annual Survey determining the publishing trends of 28 publishers during 2006/2007, 17,586 titles were published. These were first and revised editions and reprints. The SALB produced 900 titles in alternative formats during that same period representing 5% of publishing output, which is in line with the international general norm, although unacceptable in terms of accessibility for blind and visually impaired persons.

There are a number of disadvantages when publishing in alternative formats:

- There is a time delay before the title is available to the members.
- It is a costly exercise to create a master copy of a title.
- Ensuring quality audio and Braille titles is challenging since many people are involved in the reproduction process.
- Limited titles are made available due to copyright restrictions, scarce resources and production requirements.

National and International Provisions for the Blind and Visually Impaired, and other Reading Disabled Persons

On 28 June 2013 the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled was signed by 51 countries. The Marrakesh Treaty is an historic achievement that does two important things: it sets international minimum standards for exemptions to copyright for the blind, visually impaired and other reading disabled persons, and it enables the cross border sharing of books and other materials in formats that enable access by the blind, visually impaired and other reading disabled persons.

South African government representatives were engaged in the successful negotiation of the treaty. Deputy Minister of Women, Children and People with

Disabilities (WCPD), Henrietta Bogopane-Zulu argued for the treaty during the diplomatic conference that led to conclusion of the treaty. Despite this, South Africa has not signed the treaty, even though the United States of America, which long opposed the treaty, signed on 2 October 2013. The South African government representatives who argued for the treaty did so from the same constitutional imperative that requires urgent changes to national legislation to enable access to knowledge by the blind, visually impaired and other print-disabled persons. As the Multi-Stakeholder Declaration South African Response to the WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons (TVI) states:

“The supreme law in South Africa is the Constitution and requires that blind and visually impaired persons, or any other disabled persons, should not be discriminated against on the grounds of their impairments. The South African Government has further committed itself to meet its obligation, according to the Bill of Rights, to not only prohibit such discrimination but to take positive steps to ensure that blind and visually impaired persons enjoy the progressive realisation of their rights to education and access to information by:

- Ratifying the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and Optional Protocol (Nov 2007);
- Adopting the World Summit on Information Society (WSIS) Declaration of Principles (Dec 2003);
- Prescribing Open standards in ‘The Minimum Interoperability Operating Standards Handbook’ (Oct 2007);
- Adopting the ‘Policy on Free and Open Source Software Use for South African Government’ (Feb 2007);
- Adopting the ‘Information Society and Development Plan’ (Feb 2007).

The progressive realisation of these fundamental rights is currently constrained by dual limitations and restrictions on the adaptation or conversion of material into accessible formats and the exchange of accessible formats locally and across national borders.”

The draft Intellectual Property policy points to a challenge to developing countries posed by international, treaty-making processes that impose greater costs on developing countries that can be justified by the benefits that might flow from compliance with the treaties. The coalition agrees that South Africa should not sign, ratify or implement such treaties. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled is by definition not such a treaty. On the contrary, it was initiated by developing countries and supported by South Africa precisely because it will benefit the blind, visually impaired and other reading disabled persons in developing countries including South Africa. In so doing, it will enable blind, visually impaired and other reading disabled persons to increase their contribution to social and economic development in South Africa.

The draft policy recommends that:

“South Africa should per se not join international copyright treaties that may compromise on social and economic developmental goals” (Chapter 6, page 33). The Access to Knowledge Coalition agrees, however that it must be made clear that the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled is by definition a treaty that enables South Africa to reach its social and economic developmental goals. Therefore while it is necessary for South Africa to consider carefully whether such treaties as the World Intellectual Property Copyright Treaty should be ratified and implemented, very different considerations apply to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

An important objective of the Intellectual Property policy is to apply the

Intellectual Property system alongside other government policies to contribute to development. The policy is therefore intended to encourage co-ordination within all spheres of government. This must be borne in mind when considering the relationship between provisions for the blind, visually impaired and print disabled in international agreements and the urgent need for provisions for the blind, visually impaired and print disabled in national legislation. South Africa has already invested its international reputation in supporting the Marrakesh Treaty, it should therefore sign the treaty as soon as possible.

It is important to remember that the reason that South Africa supported the treaty is the South Africa commitment to equality. Even if the treaty association has not yet come to a successful conclusion, the South African commitment to equality would nevertheless require urgent changes to South African national law.

The Marrakesh Treaty supports the necessary changes to South African copyright law in two ways. Firstly by setting minimum international exception and limitations for blind, visually impaired and other print-disabled persons it ensures that any national law that complies with the treaty is compliant with all of the other international treaties. Therefore South Africa can change its laws to incorporate those limitations and exceptions without concerns about complaints to the World Trade Organisation. Secondly, the treaty enables materials such as books put in to formats suitable for use by blind, visually impaired and other reading disabled persons in one country into another country without it being necessary to get permission from the copyright holder. However a country can only import works converted into an accessible format if it has signed, ratified and implemented the treaty.

Proposed Recommendations

The Access to Knowledge coalition submits the following recommendations for inclusion in the national Intellectual Property policy to address the concerns of the blind, visually impaired and print disabled.

- *Sign, ratify and implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled;*
- *Remove barriers to access to learning materials faced by people with disabilities by allowing the permission-free conversion, distribution, import and export of learning material into accessible and open formats;*
- *Ensure rights for non-profit organisations to create and distribute accessible formats without having to obtain permission from copyright owners;*
- *Provide legal norms to ensure that digital technologies can be used to greatly expand the number of works accessible to blind and visually impaired persons;*
- *Make necessary exceptions to ensure that blind and visually impaired persons have access to reading materials in a technology-neutral way that operates in all environments, and without requiring the consent of any information intermediaries, whether search engines, internet service providers or other intermediaries.*

(The proposed recommendations could be inserted in Chapter 6 on Copyright, Software and Internet)

2.1.2 Fair Use

The draft National Policy on Intellectual Property supports the principle of fair use. “No innovation will occur without the principle of fair use/fair dealing. The only issue is one of monitoring rather than principle” (Chapter 1, page 19).

“South African internet users must be entitled to fair use rights such as making and distributing copies from electronic sources in reasonable numbers for educational and research purposes and using reasonable excerpts in commentary and criticism” (Chapter 6, page 33). Chapter 6 raises the issue of whether fair use is sufficient for the needs of developing countries. Chapter 6 also expresses concern that technological measures might prevent the exercise of fair use.

However South Africa does not have an explicit fair use provision. Instead the current exceptions are inadequate, overly complicated and difficult to use. The Association for Progressive Communications commissioned the report *Realising Human Rights in South African Copyright Legislation: Report on Fundamental Rights, and Global Copyright Legislative Best Practise for Access to Knowledge in South Africa (APC Report)*, which sets out the problems with the current exceptions in South African law (pages 20-37). The solution is a broad, flexible, open-ended provision that enables innovative uses as well as education. If South Africa were to draft its own fair use provision it would have to ensure that the provision complied with treaty obligations including the three factor test in the TRIPS agreement. This is likely to be both time and resource intensive. Instead South Africa should copy the United States fair use provision (17 U.S.C § 107) that stipulates that the fair use for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright. Whether a use is fair depends on a four-factor analysis including the purpose and character of the use, the nature of the work, the amount of the original used and the effect of the use on the market for the work.

Israel and South Korea have introduced fair use provisions modelled on the United States provision, and Australia is currently considering doing so. Other countries that have introduced broader flexible use exceptions include Singapore (2006), Taiwan (2007) and Malaysia (2012). A fair use provision that is modelled on the United States provision complies with all relevant international agreements including TRIPS. It can thus be inserted into the 1978 Copyright Act as an addition to the current exemptions without a prolonged policy process. A detailed case for an fair use provision is set out in the APC Report.

As the draft policy points out, fair use can sometimes be restricted by technological measures that prevent a user from exercising fair use, and by anti-circumvention provisions such as Section 86 of the Electronic

Communications and Transactions Act. The fair use provision should thus be accompanied by a stipulation that users are entitled to overcome technological barriers when engaging in fair use.

Proposed Recommendations

The Access to Knowledge coalition submits the following recommendations be included in the national Intellectual Property policy to address the issue of fair use.

- *Add an explicit fair use provision, closely modelled on United States fair use provision to the 1978 Copyright Act;*
- *Stipulate that a user engaged in fair use may circumvent technological restrictions that would otherwise prevent her fair use.*

2.2 Access to Knowledge Issues in the Draft IP Policy

The draft National Policy on Intellectual Property recommends that:

“To enhance access to copyrighted materials and achieve developmental goals for education and knowledge transfer, South Africa must adopt pro-competitive measures under copyright legislation. The legislation must provide the maintenance and adoption of broad exemptions for educational, research and library use” (Chapter 6, page 33).

The Access to Knowledge Coalition welcomes this recommendation. However this is insufficient as it stands to enable access to knowledge. There are a number of additional issues which should be recognised in the National Intellectual Property policy. While Chapter 6 refers to the availability of copyright exceptions already enacted in the laws of many developed countries and the concern expressed by developing countries in debates at the World Intellectual Property Forum that useful as these exceptions are they do not meet all the needs of developing countries. It is important to note that developing countries make this point in the context of arguments for treaties

requiring countries to offer minimum limitations and exceptions such as the Marrakesh Treaty. The exemptions and other provisions in copyright laws of developed countries are not equal, some are far better than others. The attached APC Report discusses some of the best practises in copyright law in a number of developed and developing countries, and makes a number of recommendations, including the need to permit parallel importation of copyright materials and translation provisions.

In addition the following issues should be recognised as requiring policy attention:

- The need to make legislation technologically appropriate by specifically allowing:
 - temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process; and
 - time-shifting, format-shifting and space-shifting by consumers.
- The need to authorise circumvention of technologies which jeopardise the balance of copyright by preventing users from exercising their rights under exceptions and limitations.
- Copyright exceptions and limitations should automatically qualify as defences in the context of anti-circumvention provisions .
- The need to protect the public domain; specifically by enacting an exemption that permits the the temporary copying and adaptation of a copyright work that includes a public domain work, so that the public domain work may be made freely available on its own.
- The need to address the orphan works problem. Orphan works are books and other creative works for which there are potential users of the work who would like to obtain permission from the copyright holder and would in many cases be willing to pay the copyright holder, the copyright holder cannot be found. The work cannot be used because copyright forbids use without permission.

Collecting Societies

The draft policy discusses the positive role which collecting societies may play, especially in promoting the interests of local artists (Chapter 1 (c)). The coalition supports policies to empower local artists however there are also potentially negative consequences of relying on collecting societies. The final Report of the United Kingdom Intellectual Property Commission found that “On the other hand, some commentators argue that although such organisations in developing countries may collect royalties for local authors and artists, they are likely to collect far more for foreign rights holders from developed countries who may often dominate the market place for copyrighted works.” The Report cites the example of DALRO, a South African collecting society which remitted the majority of its collected funds to foreign rights holders. In addition, as the Report warns “collective management organisations can potentially wield significant market power and may act in an anti-competitive manner” (98). In particular, collecting societies in South Africa have been hostile to, and obstructive of the efforts of the coalition to ensure equitable access to knowledge and learning materials for blind, visually impaired, print-disabled and other handicapped persons. These negative consequences must be managed by regulating the governance of collecting societies to ensure transparency, especially in regard to revenues, accountability to local artists and prohibition of anti-competitive behaviours. Collecting societies should have charters which require them to act in the public interest, for example, by co-operating with efforts by the blind, visually impaired, print-disabled and other handicapped persons to gain access to copyright works.

Recommendation on Collecting Societies

- *The collective management of copyright must be introduced into the copyright regime as a whole; the regulation of collective management must require transparent, accountable governance and permit competition, and require collective management organisations to respond to the public interest.*

3. Conclusion

The draft National Policy on Intellectual Property of South Africa focuses on intellectual property from a trade and industrial policy perspective. However the fundamental rights of blind, visually impaired and other reading disabled persons to equality, education, participation in cultural life, and to receive and impart information are at stake. These rights are infringed by current copyright legislation which the coalition finds to be unconstitutional. While some copyright holders may complain about the necessary changes, government is mandated and required to protect, advance and uphold these rights in refining policy and formulating legislation.

There is a wide range of important issues that affect many different aspects of creativity, culture, education, research and in the current intellectual property laws. While it will not resolve all of the issues, one simple change to current copyright legislation will vastly increase the ability of South Africans to use knowledge for education, creativity and re-engineering. That simple change is the introduction of an explicit fair use provision modelled on the United States fair use provision.