



18 July 2018

Chairperson: Portfolio Committee on Trade and Industry
Parliament of the Republic of South Africa
CAPE TOWN

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Dear Members of the Portfolio Committee

Comments by the International Association of Scientific Technical and Medical Publishers (STM) in response to the Copyright Amendment Bill, 13 of 2017

STM is the leading global trade association for academic and professional publishers. It has over 120 members in 21 countries, who each year collectively publish nearly 66% of all journal articles and tens of thousands of monographs and reference works. STM members include learned societies, university presses and private companies.

STM made written submissions in response to the Draft Copyright Amendment Bill in 2015 and the Copyright Amendment Bill, 2017, as originally introduced in May 2017. We would similarly like to respond to the revision of the latter by the Portfolio Committee on Trade and Industry, released on 20 June 2018 (referred to in this submission as the “B-Bill”).

There has been no material change in the B-Bill in relation to most of the substantive points we raised in July 2017, and in that regard, STM’s comments in its submission of July 2017 still apply to the B-Bill.

We note that this consultation is a limited in regard to its subject matter, being in respect of some of the changes effected in the revision leading to the B-Bill.

In relation to the original Bill, we stated in our July 2017 submission that “Considering that the publishing industry’s warnings of unintended consequences of the proposed changes not

having been heeded in compiling the Bill, the lack of policy direction and the absence of impact studies, we submit that the Bill is not a sound document on which to base a review of South Africa's copyright laws." We have the same observation in relation to the B-Bill, which persists with a number of flaws contained in the original Bill and even introduces new errors.

Our submission is confined to three points of direct interest to STM publishers, which should not be considered as an exhaustive response to the B-Bill:

Un-waivable and un-assignable perpetual right by authors to a royalty in relation to works where they have assigned the copyright

The provisions of the new Section 6A (Clause 5 of the B-Bill) are newly introduced by the B-Bill, providing for an un-waivable and un-assignable perpetual right by authors to a royalty in relation to works where they have assigned the copyright.

However, this provision directly interferes with the free market functioning of scholarly publishing, where authors of articles meant for scholarly journals assign the copyright to publishers or scholarly societies without monetary consideration, since their motivation to publish in STM academic journals is not financial. The *STM Report: An overview of scientific and scholarly journal publishing* describes¹ authors motivation as follows:

The journal has traditionally been seen to embody four functions:

- *Registration: third-party establishment by date-stamping of the author's precedence and ownership of an idea*
- *Dissemination: communicating the findings to its intended audience usually via the brand identity of the journal*
- *Certification: ensuring quality control through peer review and rewarding authors*
- *Archival record: preserving a fixed version of the paper for future reference and citation*

... these functions can be seen as much as services for authors as for readers. Indeed it has been suggested that when authors transfer rights in their articles to journal publishers for no fee, they are not so much "giving away" the rights as exchanging them for these services (and others, such as copy editing, tagging and semantic enrichment, etc.).

We have noticed that neither the SEAIS Report for the original Bill not the deliberations in Parliament have taken this into account.

Where such assignments are carried out, they can have as assignees the publishers of the journals or the scholarly societies for whom the publishers render publishing services. STM's

¹ https://www.stm-assoc.org/2015_02_20_STM_Report_2015.pdf at p.16.

members provide publishing services to a number of South African scholarly societies, some of which are listed below:

- African Mathematical Union
- Economic Society of South Africa
- Soil Science Society of South Africa
- South African Association of Botanists
- South African Sociological Association
- South African Society of Crop Production
- Southern African Association for Research in Mathematics, Science and Technology Education
- Southern African Society for Horticultural Science
- Southern African Society for Weed Science

Usually, a subscription to the society journal is included in the society's membership fee, and the authors of articles for the society journal are very often members. However, the provisions of new Section 6A, coupled with the contract override provision in new Section 39B (Clause 34), will, in addition to interfering in settled relationships between South African scholarly authors and their publishers, also endanger the continued existence of South African scholarly societies, which, in general, simply have no budget to allocate any part of their income from sales of their journals to authors where their authors do not demand royalties in the first place.

From STM's perspective, Section 6A should be deleted in its entirety, and an alternative solution must be found to support authors in circumstances where research indicates that they are disadvantaged by not granting assignments of copyright without fair remuneration.

Open Access for publicly-funded research

New Section 12D(7), introduced by Clause 14, dealing with "open access" of "scientific and other contributions", did not appear in the 2015 Draft Bill. It undermines the rights of authors and publishers, and also deny authors academic freedom to publish in the journal of their choice.

The new Section 12D(7) does not have its origin in any discussions with STM publishers or any policy developed in South Africa that we know of. Neither the Memorandum of Objects to the B-Bill² nor the SEIAS report³ makes reference to it.

² Para 3.14 of the Memorandum only says that new Section 12D provides "for exceptions related to educational and academic activities." Para 1.1 contains the unmotivated and unsubstantiated statement "researchers are restricted to further developing research", with no explanation as to how Section 12D(7) will improve this.

³ Not only does the SEIAS Report not deal with the issue, it also states that there are "No areas for further research" (para 10).

STM opposes legislation that places restrictions on academic freedom. STM believes that authors should have the right to choose the journal in which they publish and the method in which they publish. A choice to publish in an Open Access journal – of which there are many in South Africa and around the world – is as valid and legally supportable as a choice to publish in a journal published for subscription. As stated in our July 2017 submission, STM publishers welcome sustainable Open Access as a legitimate alternative to the traditional subscription model, and many STM members publish on an Open Access basis only.

An across-the-board requirement for deposit of final published versions of articles from subscription journals into institutional repositories cannibalises publishers' investment in those journals and disregards the publisher's rights in respect of the published edition, which includes the publisher's contributions to the article such as editing and peer-review.

A well-functioning Open Access policy needs to take into account the difference between Gold Open Access, where the publication of an edited and peer-reviewed article under an appropriate Open Access licence is funded upfront, and the situation where authors have the option to make earlier versions of their work available after a time delay in a model which relies on subscriptions to fund journal publication.

Time delays after which an early-draft version of a published article can be made publicly available should be based on flexible guidelines that allow for the different practices of different research communities to be respected. One size does not fit all and abbreviated time delays risk publishers not being able to recover the substantial investments they make in bringing articles about research to their final discoverable form.

For these reasons, we submit that Section 12D(7) should be withdrawn from the Bill entirely.

Conclusion

STM is ready to amplify or otherwise assist in any way that would help bring the B-Bill to a form that would positively contribute to an effective and efficient copyright system.

Yours faithfully



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