

22 February 2019

The Hon. Mr Edwin Makue  
Chair of the Select Committee on Trade and International Relations  
National Council of Provinces  
Parliament of the Republic of South Africa  
CAPE TOWN

By email only to the Committee Secretariat: [hmtleni@parliament.gov.za](mailto:hmtleni@parliament.gov.za)

Dear Members of the Select Committee

**Comments by the International Association of Scientific Technical and Medical Publishers (STM) in response to the Copyright Amendment Bill, B13 of 2017**

STM is the leading global trade association for academic and professional publishers. It has over 150 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 supports publishers in their mission to advance research worldwide. STM publishers serve society by developing standards and technology to ensure research is of high quality, trustworthy and easy to access. STM promotes the important contribution that publishers make to innovation, openness and the sharing of knowledge.

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, and to the revision of the latter by the Portfolio Committee on Trade and Industry released on 20 June 2018 (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, the comments set out in that submission still stand in respect of items of direct relevance to STM and its members. The submissions are available for inspection on the STM website at [https://www.stm-assoc.org/2017\\_07\\_07\\_STM\\_Submission\\_to\\_SA\\_Copyright\\_Amendment\\_Bill\\_2017.pdf](https://www.stm-assoc.org/2017_07_07_STM_Submission_to_SA_Copyright_Amendment_Bill_2017.pdf) and [https://www.stm-assoc.org/2018\\_07\\_18\\_STM\\_Submission\\_SA\\_Copyright\\_Amendment\\_Bill\\_18July2018.pdf](https://www.stm-assoc.org/2018_07_18_STM_Submission_SA_Copyright_Amendment_Bill_18July2018.pdf). Our current comment is focused on two points of special interest to STM publishers, and should not be considered as an exhaustive response to the consultation:

## New remuneration right by authors to a royalty in relation to works where they have assigned the copyright

The provisions of the new Section 6A are newly introduced by the B-Bill, providing for a right for authors to a royalty in relation to works where they have assigned the copyright, which right cannot be assigned or waived.

This provision has the potential to undermine the investments publishers make in scholarly communication to the detriment of the authors the provision is intended to benefit. Authors of articles meant for scholarly journals assign the copyright to publishers in return for the services publishers provide. These services include the development, operation, and enhancement of the journals which are integral to career advancement and grant decisions of vital importance to author-researchers. The *STM Report: An overview of scientific and scholarly journal publishing* describes<sup>1</sup> 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.).*

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

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 will, in addition to interfering in long-standing and well-functioning relationships between South African scholarly authors and their publishers where no reasons or explanation for these consequences arising from this change appear in any of the Bill's Memorandum of Objects, the Socio-Economic Impact Assessment System (SEIAS) Report that preceded introduction of the Bill, or in the deliberations of the National Assembly, 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 seek royalties.

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<sup>1</sup> [https://www.stm-assoc.org/2015\\_02\\_20\\_STM\\_Report\\_2015.pdf](https://www.stm-assoc.org/2015_02_20_STM_Report_2015.pdf) at p.16.

From STM's perspective, Section 6A should be deleted in its entirety. An alternative solution must be found to support those authors who may be identified by sound economic impact assessment to have been disadvantaged by granting assignments of copyright without fair remuneration, that keep out of its scope academic authors of articles written for publication in STM journals.

### Open Access for publicly-funded research

STM publishers offer multiple options to publish open access and welcome sustainable Open Access publishing as a legitimate alternative to the traditional subscription model. Many STM members publish on an Open Access basis only.

Unfortunately, the new Section 12D(7) not only undermines the rights of authors and publishers, but also denies authors 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.

There is no rationale or explanation for this provision in either the Memorandum of Objects to the B-Bill<sup>2</sup> or the SEIAS report,<sup>3</sup> nor was this deliberated by the Portfolio Committee.

However, the across-the-board requirement for deposit of final published versions of articles from subscription journals, even where there has been 50% State funding, into institutional repositories undermines 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.

This undermining of the subscription model means that the new provision does not provide a sustainable solution. A workable and fair 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 Green Open Access, where authors have the option to make earlier versions of their work available after a time delay under an appropriate Open Access licence in a model which is funded by subscriptions.

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.

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<sup>2</sup> 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 how Section 12D(7) will improve this situation.

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

With that background, we submit that Section12D(7) should be withdrawn from the B-Bill entirely.

### Conclusion

We respectfully suggest that the proposed legislation could be substantively improved. It currently falls short of fully addressing the concerns of industries that depend on copyright. We request that the B-Bill be referred back to the National Assembly for reformulation before it is reconsidered.

Yours faithfully



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