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Promoting human rights and democracy through the media since 1993

MS JOANMARIAE L. FUBBS

CHAIRPERSON: PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY

FOR ATTENTION: MR. A. HERMANS

AHERMANS@PARLIAMENT.GOV.ZA

08 August 2017

Dear Ms Fubbs,

COPYRIGHT AMENDMENT BILL 2017 / FURTHER SUBMISSION BY MEDIA MONITORING AFRICA

1. On the “software upgrade” required by the Bill

- 1.1 During oral submissions by Media Monitoring Africa (“MMA”) on the 3rd of August 2017 the question was put to MMA to provide further input on what the specific challenges are that we have identified.
- 1.2 As noted in our submission, we welcome the amendments to the new, fair and practical limitations and exceptions in the Bill in line with international treaties and practices. Provisions for media, research, education, civic and many other uses are welcomed, especially in the context of a developing country and in a digital world.
- 1.3 Despite the intention to render copyright law relevant to the use and exploitation of works in a digital era, MMA submits that Copyright Bill in its current form does not adequately consider the application of copyright to digital media.
- 1.4 For instance, there is no reference social media in the Bill. Given its growing importance in our society, and also its role as key disseminator of information on an increasing basis this is surely a crucial omission. Not only are social media a critical platform, reaching larger audiences now than most traditional media, but because of their international nature their omission poses challenges for copyright issues as well.

- 1.4.1 We are curious as to where the first point of publication arises when one publishes something first on the internet. Is it the computer? Is it the server on which the data is stored? The geographical nature of copyright protection and implementation is problematic for the following reason: when publishing online, this publishing does not take place within a specific geographic location. Publishing on the internet cannot purport to be done within a specific geographic location.
- 1.5 Furthermore, we note that if we accept that a digital work must in some form be data, who owns the data and how does that impact copyright? Does copyright subsist in the location of the servers? If a social media site is owned in Ireland, but the data is stored in North America and the work is produced by an artist in South Africa, how do we deal with such scenarios?
- 1.6 We reiterate the gaps around concerns on copyright infringement: The currency of digital works, for instance online press reports and news articles and its economic value associated with time is not accounted for in contemplating relief for infringement of copyright.
- 1.7 Currently we know of a range of sites who will take and copy content from credible news sites (where journalists have been paid to produce original content) and place it almost word for word, or upwards of 70% without accreditation, permission, and with a clear commercial intention. In other words, they are not using the content in a manner that would satisfy the fair use conditions envisaged in the Bill.
- 1.8 What is the urgent relief to counter the unauthorised reproduction of news articles online or the adaptation of news articles culminating in so called fake news? Digital works are economically related to website visits for instance. We urge a review of the effectiveness of the self-regulatory relief provided for in the Electronic Communications and Transactions Act, 2002 through so-called take down notices to remove copyright infringing material. It is our submission that the remedies offered neither address economic losses nor provide the swiftness of action to deter online copyright infringement. We request, through this process that measures for urgent and effective relief for the unlawful reproduction and adaptation of digital works are introduced.
- 1.9 We submit that the gaps we have highlighted are not unique to South Africa, but are common to other parts of the world. Accordingly, we would ask that the Committee and or the Minister convenes a separate grouping of experts in law, key stakeholders, copyright experts, media publishers and digital media experts in order to see if we can develop workable solutions for our new law. Our fear is that if these challenges are not addressed the revised bill will fail to address crucial needs in the media sector.
- 1.9.1 Regarding terminology: The Copyright Act defines a “computer programme” which associates with the use of instructions on a computer. The term computer has not been amended to provide a technology neutral interpretation. Does a “computer programme” include websites, software applications, website applications or social platforms?

We thank the Committee for the opportunity to address the questions posed and would be happy to provide further information if requested.

Yours faithfully

A handwritten signature in black ink, appearing to read 'W. Bird', written over a horizontal line.

WILLIAM BIRD
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