

Copyright and Performer's Protection Amendment Bills - update

By [Carla Collett](#) and [Cindy Leibowitz](#)

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The Portfolio Committee on Trade and Industry (Committee) met to consider whether new proposed amendments to the Copyright Amendment Bill and the Performers' Protection Amendment Bill (Bills) should be advertised for public comment. The President sent them back to the National Assembly to reconsider because he was concerned about the constitutionality of these Bills.



Image source: Dmitry Shpilko – [123RF.com](#)

The Committee agreed to advertise substantive amendments, namely those that are not of a technical nature, such as incorrect grammar. The public will be able to view and comment on these amendments soon.

Here is a “sneak peek” into some of the key amendments to the Copyright Amendment Bill which will be advertised. This list is not exhaustive.

| | Current Copyright Amendment Bill | Proposed new amendment |
|----------------------------------|---|---|
| Persons with disabilities | Includes the rights of disabled persons to access works of copyright. | A person converting a work (eg. a book) into a format which is accessible to persons with disabilities (eg. conversion to Braille) must ensure that the integrity of the original work is respected. In practice, this can be achieved by only converting the parts that are absolutely necessary to make the work more accessible. |
| Personal copies | The Copyright Amendment Bill lists some acts that will not infringe a copyright holder's rights. One is making a copy of a work for personal, non-commercial use. | To avoid infringing copyright under this category, the work will need to be "lawfully acquired", which is defined in the proposed new amendments. This definition may be too restrictive and have unintended consequences. |
| Digital rights | Digital rights, which aim to modernise the existing legislation, are given to the holders of various works of authorship. | Digital rights will be extended to the copyright holders of computer programs and published editions. A person that infringes a copyright holder's digital rights will be guilty of an offence. |

| | | |
|--|---|---|
| Fair use* * The doctrine of fair use enables the use of a work for a limited period without the permission of the copyright holder | The doctrine of fair use is incorporated. | Clarifies when this doctrine is applicable. |
|--|---|---|

Various other amendments have been proposed, including some changes to align the Bills with international treaties and a clause regarding ephemeral rights (the usage of a performer's performance or work by a broadcaster without infringing the copyright holder's rights).

We have included a factual analysis of the proposed amendments in this alert; however, we are concerned with some of these changes and their impact on businesses. Please contact our team of experienced Intellectual Property lawyers to obtain advice about how your business may be impacted.

ABOUT THE AUTHOR

Carla Collett and Cindy Leibowitz, Webber Wentzel

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