**Country report – South Africa**

**Annual report to the IFLA CLM Committee**

**Lyon 2014**

This report is a short account of the activities:

***Copyright***

The Copyright Act No. 98 of 1978 (as amended) has not yet been amended.

The Department of Trade and Industry published a draft Intellectual Property Policy for public comment in August 2013 (<http://ip-unit.org/wp-content/uploads/2013/09/DRAFT-IP-POLICY.pdf>). . After submissions had been received, a Regulatory Impact Assessment (RIA) was done by an independent firm of economists, together with their legal advisor. Stakeholders were interviewed for purposes of the RIA in March 2014. The RIA report has not yet been submitted to Government.

On 1 August 2014, the Department of Trade and Industry announced that a Copyright Act Amendment Bill will be tabled in Parliament during the current financial year 2014. It is not clear whether this amendment will only address collection agencies and royalties for artists and musicians, based on findings of the Copyrights Review Commission which was set up in 2011 to probe the distribution of royalties to artists in South Africa. Or, whether broader limitations and exceptions will also be included for libraries, archives, education and research, as well as the provisions of the Marrakesh Treaty. I have written to the Department of Trade & Industry and the Dept. of Arts & Culture in this regard and await their responses.

***New legislation***

The Intellectual Property Amendment Act No. 28 of 2013 ([www.gov.za/documents/download.php?f=205625](http://www.gov.za/documents/download.php?f=205625)) was passed in December 2013, to address traditional knowledge works in the Copyright and other related IP legislation. It was strongly opposed by most stakeholders across the board. The opposition party, the Democratic Alliance, submitted a sui generis proposal, the Draft Protection of Traditional Knowledge Bill, to Government for consideration, but it was dismissed by Government in favour of the aforementioned Act.

***Proposed legislation***

Nothing to report at this stage.

***Pending legislative issues***

South Africa has not yet signed the Marrakesh Treaty. The process has to go through various legislative processes before it is passed by Parliament. Only then, can South Africa ratify the Treaty and include its provisions in relevant legislation.

**Legal Matters**

***New legislation***

Protection of Personal Information Act (POPI) No. 4 of 2013 was enacted in November 2013 – see: <http://www.justice.gov.za/legislation/bills/b9-2009_protectionofpersonalinformation.pdf>

**Law cases**

No cases relating to libraries or educational institutions were recorded during the past year.

The first prosecution of a South African for sharing a media file over the internet was concluded in April 2014 in the Commercial Crimes Court in Bellville, Cape Town. The offender, Mr Majedien Norton, pleaded guilty to copyright infringement for sharing the unreleased South African film Four Corners online. He received a three-year prison sentence, wholly suspended for five years, in a plea bargain agreement with the state. The three year sentence was in respect of violating section 27 of the Copyright Act. Norton also received a six month suspended sentence under Counterfeit Goods. Some rightsholders believe this sentence was not harsh enough, whilst some intellectual property academics feel that the sentence was too draconian**.**

***Advocacy/Lobbying activities*:**

In most of the South African universities, or their libraries, there are persons responsible for promoting copyright compliance and marketing of open access and open learning resources. Brochures and websites/LibGuides are part of their advocacy programmes. The Library Association of South Africa (LIASA) organises workshops on such topics from time to time, especially for public libraries.

***Educational activities***

South African higher education institutions and their libraries provide education about copyright, plagiarism and open access issues through workshops, presentations and seminars. Open Access Week is celebrated on an annual basis, with institutions offering different events during or around Open Access Week in October. My Copyright & A2K Issues newsletter hosted on the African.ll website ([www.africanlii.org/blogs/denise](http://www.africanlii.org/blogs/denise)) reaches more than 7000 subscribers around the world and is also forwarded on by other listservs. My LibGuide on Copyright and Related Matters provide useful national and international information about copyright (<http://libguides.wits.ac.za/Copyright_and_Related_Issues>). See other LibGuides including ones on Open Access, Open Learning Materials, Digitisation & Legal Deposit issues at <http://libguides.wits.ac.za/profile/copyright>

I have started giving talks on copyright, plagiarism and Open Access to private schools in Gauteng province. In 2013 and 2014, I presented to 4 private schools and 1 private college. This decision was taken to educate scholars so that when they go to tertiary institutions, they will be better equipped when doing their studies or research.

The Wider Gauteng IR Forum was established on 23 March 2014, at its inaugural meeting at the University of Pretoria. Librarians and IR technical staff from higher educational institutions in the Gauteng Province shared information and resources on institutional repositories. The Forum will meet again at the University of Johannesburg on the 4 September 2014.

***Strategic plans for the future***

It is important that limitations and exceptions for libraries, archives, research and education are addressed in any amendments to the South African Copyright law. It is imperative that the Copyright law is amended urgently, as various other library-related laws, including those of the National Library of South Africa, the Legal Deposit Act and legislation relating to persons with disabilities, cannot be amended until the Copyright law has been amended. I have been liaising with the Department of Trade & Industry and the Department of Arts & Culture to establish how and when this will be done.

***Other issues***

***IFLA TLIB***

South Africa continues to play a leading role in the Africa Group at WIPO SCCR meetings. South Africa is currently involved in the discussions on the Africa Group’s Draft Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives. It participated in the WIPO SCCR 27 and 28 meetings during 2014.

At the request of IFLA, I requested our Library Association of South Africa (LIASA) to write to the Minister of Trade and Industry, asking for his strong support for the Treaty for Libraries and Archives at the SCCR 28 meeting in 2014. This letter was send by LIASA and acknowledgement was received from the Minister’s private secretary.

The Department of Arts and Culture also attended WIPO SCCR 27 and 28 and sought some input from me for their submissions on limitations and exceptions for libraries and archives. I

continue to promote the Treaties for Limitations and Exceptions to Government officials, libraries and educational institutions, through personal communications, my information service “Copyright & A2K Issues, where possible.

***IFLA E-Lending Workgroup***

I was invited by Julia Brungs and Paul Whitney to join the IFLA e-Lending Workgroup to represent the African region. Contributed to the drafting and editing of the 2014 e-Learning Background Paper (<http://www.ifla.org/node/8851>) which was launched on 30 July 2014.

***Ministry of Arts and Culture’s Legal Deposit Committee***

I was appointed for another term to IFLA Committee on Copyright and Other Legal Matters (CLM) from 2013 to 2017. Was nominated by the Malawi Library Association. Will assist with the Legal workgroup with recommendations for amendments to the current Legal Deposit Act, No. 54, 1997. I am leader of the workgroup on Marketing and Advocacy. As part of that project, I have compiled a LibGuide on Legal Deposit in South Africa (<http://libguides.wits.ac.za/LegalDeposit>).

***Marrakesh and Beijing Treaties***

Was invited and sponsored by Department of Arts & Culture (DAC) to present on the Marrakesh Treaty and its implications for South Africa at their IP symposium in Cape Town on 14 October 2013, where various speakers presented on the Beijing and Marrakesh Treaties. Stakeholders were mainly from libraries, archives, higher education institutions and DAC.

Was invited to be the main speaker at the launch of the Human Rights Commission’s new Library Unit for Disabled Persons on 18 March 2014. Presented on “*The Road to the Marrakesh Treaty*”. 40 people attended.

***Big Data/Data Management***

Was invited to a Big Data workshop held at my institution on 30 May 2014 and was appointed a member of the Policy, Legal, Library and Humanities Workgroup. This workgroup is responsible for addressing issues around data capture, storage, protection, preservation, security for human subject data, open data and accessibility of research data. Data and text mining will also be discussed. .

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