

SOUTH CENTRE SUPPORTS DEBATES ON DEVELOPMENTS IN COPYRIGHT LAW AND ACCESS TO KNOWLEDGE IN AFRICA





A Right to Research in Africa?

A Week of Debates on Copyright and Access to Knowledge
in Pretoria and Cape Town, South Africa
from 23 - 27 January 2023

REPORT ON THE
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“A RIGHT TO
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A session during Copyright Week at the University of Pretoria

A conference “A Right to Research in Africa? A Week of Debates on Copyright and Access to Knowledge” took place on 23-27 January 2023 at the University of Pretoria and the University of Cape Town, South Africa. The gathering of scholars, artists, librarians, researchers and government officials had the objective to discuss the evolution of copyright law and the role of limitations and exceptions (L&Es) to advance research in Africa. The week of debates was co-organized by the South Centre, ReCreate South Africa, Program on Information Justice and Intellectual Property (PIJIP) – American University Washington College of Law, Electronic Information for Libraries (EIFL), the University of Pretoria – Future Africa, the University of Cape Town – IP Unit, the Centre for Intellectual Property and Information Technology Law (CIPIT) – Strathmore University, Wikimedia Foundation and Masakhane.

For more information on the event, programmes, biographies of the speakers, please refer to the website: <https://www.re-createza.org/r2r>.

With the attendance of over 200 online and in-person participants, the week of events enabled a dialogue between multiple stakeholders, including diplomats from Permanent Missions in Geneva, copyright commissions from the African continent, other government officials and representatives of public institutions of South Africa, copyright experts from around the world, universities, libraries and civil society organizations working on access to knowledge across the continent.

The week of debates enabled Geneva-based officials to learn of concrete challenges African organizations face in navigating copyright law and on-going processes for legislative reform and interpretation of copyright L&Es. Additionally, the event exposed local stakeholders to multilateral processes such as at the African Group’s proposed work programme on L&Es at the World Intellectual Property Organization (WIPO)’s Standing Committee on Copyright and Related Rights (SCCR).

During the week, the South Centre convened two public sessions and two closed discussions for government officials. The historical leadership of the African Group on public interest matters related to intellectual property (IP), and how to strengthen and articulate the voices

of Africa and the Global South across multilateral, regional and national processes and to advance national legislative reforms in Africa, were some of the themes explored. The sessions also took stock and discussed the strategy for the WIPO SCCR in 2023, benefitting from the interaction between different stakeholders.

Below is a summary of the South Centre's two public sessions. Highlights of the overall conference follow thereafter.



A meeting during Copyright Week at the University of Cape Town

I. African Leadership on Copyright and the Public Interest: South Centre Public Session (University of Pretoria)



First South Centre Public Session at the University of Pretoria

The first public session, held on 23 January 2023 in Pretoria, was moderated by **Dr. Viviana Muñoz-Tellez, Coordinator of the Health, Intellectual Property and Biodiversity Programme (HIPB) of the South Centre**, and discussed the African leadership across multilateral fora on intellectual property, particularly on topics pertaining to copyright and the public interest. The active and coordinated participation of the African Group counters the general tendency in multilateral intellectual property fora towards increasing copyright protection under an agenda largely set by Western countries and copyright-owners organizations. In the copyright area, the African Group at WIPO has made proposals, including a treaty on L&Es, alongside other developing countries, to balance copyright protection with adequate L&Es to support the public interest. Policymakers and experts from the African continent have become more active in these processes; now accompanied by significant support from academic and civil society organizations (CSOs), in addition to the rightsholders' community and those that are concerned that the copyright system is not currently recognizing nor protecting their rights, such as in traditional cultural expressions (TCEs).

At WIPO, the Development Agenda (DA) initiated in 2007 was an important turning point. It resulted from developing countries' calls to ensure an adequate balance between the interests of those who require protection of IP and the users – in such a way that both be addressed throughout WIPO committees and activities. This change of perspective, whereunder it is acknowledged that L&Es are central to a development-oriented copyright regime, is reflected in the African Group's historical position on copyright and related issues including traditional knowledge (TK) and TCE protection.

Dr. Georges-Rémi Namekong, Minister-Counsellor, Permanent Delegation of the African Union (AU) in Geneva, noted that the AU is increasingly active in many WIPO committees and enhancing its technical expertise. Participation in Geneva meetings was a challenge for African delegations; some support is provided by the WIPO Secretariat to address this gap. Increasingly, African delegates – with support of the AU – decided to become *pro-active* by tabling proposals and position papers, not limited to statements on ongoing discussions. Retreats and workshops to reinforce the capacity are organized. He made a call for experts based on the continent and universities around the world, as well as non-governmental organizations (NGOs), to provide support on position papers and concrete proposals by the African Group.

The AU facilitates the coordination of the African Group. Dr. Namekong mentioned the variety of activities undertaken: engagement with experts from capitals and universities as well as NGOs supportive of African positions, the drafting of position papers, and the engagement with Member States that share the same views on different issues. The South Centre and AU have collaborated in joint events to support the African Group. He noted that the interventions and discussions during the conference are exactly the kind of expertise that Africans need during negotiations of L&Es to defend and promote their positions. To this end, concrete examples to be based on are very useful, as they can be referred to and serve as a basis for the discussions at WIPO. He concluded by noting the need of a common strategy to defend the common positions of the African Group.

Prof. Chidi Oguamanam, Research Chair in Sustainability Bio-Innovation, Indigenous Knowledge Systems and Global Knowledge Governance, University of Ottawa, highlighted that it was the African Group's crucial participation that led to the current discussion on L&Es. He focused his intervention on the interface between the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and

Folklore (IGC) and copyright L&E discussions. The African Group has been very solid in the IGC, seriously engaged, working consistently together with the group of like-minded countries (LMCs), sometimes including China. The current text-based negotiations anticipate a Diplomatic Conference in 2024, and the backdrop to this is that for the first time the WIPO General Assembly (GA) adopted a decision to proceed to a diplomatic conference with a text on genetic resources (GRs). The African Group is to be largely credited for this groundbreaking decision.

In the IGC texts, the African Group has supported a general provision on L&Es allowing countries and their indigenous and local communities, as appropriate, to determine the precise extent of L&Es. Ironically, delegations who had completely opposed the expansion of L&Es at SCCR since 2012 are now piling up several L&Es in the TCE and TK text. This has been the aim of the text sponsored by the United States, Japan, South Korea, with some support from the European Union, so as to include very expansive L&Es that would *de facto* impede any protection of traditional knowledge. So, while these countries at the SCCR oppose normative work on L&Es and argue that Africa and developing countries should seek technical support to make use of L&Es that are already available, when it comes to TK and TCEs, suddenly, they become the ‘fanatics’ of L&Es.

He stressed that it is necessary for Africa to defend TK and TCEs, an area in which they have a comparative advantage of creativity and innovation. Since the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is silent on TK and TCEs, Africans and other developing countries were told to discuss the topic ‘elsewhere’ – as the topic does not fit perfectly in the current IP system. The speaker gave the example of TKs whose origin is in dreams or revelations – ‘strange’ to the Western mind, but a common feature which makes TK unique. The TK may be used for innovation or as a basis of creativity, but the fundamental knowledge comes from an undocumented source (dream), which is not recognized by the IP system. So, depending on what stage you are in the chain of transmission of knowledge, a particular IP is engaged (patents, copyrights – e.g., for researchers), but the most significant contribution (the dream or revelation) is not recognized and thus for now unprotected. Therefore, we need a *sui generis* system, he concluded. At the IGC, a framework treaty is the ultimate objective. We cannot tell how indigenous peoples in remote areas in the world should govern their TK, so this is why we try to do it at the level of a framework, he concluded.

Dr. John Asein, Director General of the Nigerian Copyright Commission, highlighted that the African Group has managed to rise from difficulties to show leadership at WIPO, with positions maturing. He referred to the process of the Marrakesh Treaty, the first treaty for copyright L&Es. Back then, some experts would say that such kind of treaty didn’t exist, and therefore opposed it. But then, the Marrakesh Treaty was created, despite the pushbacks and the wide exceptions that were made to the obligations. He suggested that to lead, one must think and act globally and at the local level. He shared the experience of Nigeria in its copyright legislation amendment process. The overarching goal was to leverage copyright in a balanced and responsible manner to support the knowledge ecosystem. He argued that exceptions should not be difficult to use; they need to be designed to enable the copyright system to advance knowledge and learning.

In Nigeria, the major objectives in the Copyright Bill were to simultaneously: (i) provide more rights for authors as a reward in recognition of their intellectual efforts; (ii) provide appropriate L&Es to guarantee access to creative works while complying with international obligations; and (iii) generate capacity at the national level to enable the appropriate authority to better regulate, administer and enforce provisions of the law. The need to address the public interest and to reflect it in the substantive provisions of the law was

recognized. Nigeria's new Copyright Bill passed through Parliament last year (2022), with hopes that it will be signed soon.

In Nigeria, he noted, instead of moving away from the current 'fair dealing' system to a 'fair use' one, what was done was to rework the fair dealing provision so that it becomes more flexible and provides more guidance to the courts, thereby reaching a compromise among different interests. This moves away from the classic English fair dealing provisions, and also does not move Nigeria to the US fair use provision. In other words, this is an example of the country creating its own system, rather than replicating that of other countries.

Dr. Asein also described challenges in the reform process: (i) sustaining political will; (ii) lack of resources; (iii) weak national expertise; (iv) competing national priorities; (v) unbalanced representation in discussions and negotiations (for example, content drivers were the main participants in copyright processes, and we didn't see, for instance any libraries speaking; this puts the national agency in a difficult position to find a balance, as you need to have leadership); (vi) undue international interference; (vii) bureaucracy and slow legislative process – if you miss a particular session in Parliament, you may need to go back from scratch; (viii) rapid changes in the field – copyright issues become moving targets, as for example the emergence of text and data mining. Unfortunately, one cannot accommodate every concern and issue in every process, he said.

He further noted the usefulness of having as many stakeholder points of view as possible. Finally, he noted that discussions at SCCR and international reforms may not achieve all progress we want to make, but that the discussions are often very helpful in illuminating and helping us understand the dimensions and issues at the national level – and you can pick and choose the best way for international instruments to mature, and solutions to help you move and grow at the national level.

Mrs. Sharon Chahale Wata, Deputy Director, Training and Research at the Kenya Copyright Board (KECOBO), shared the Kenyan experience with copyright reform. She noted that Kenya undertook a copyright amendment in 2001, and several subsequent amendments (e.g., in 2019 on the regulation of [copyright] collective management organizations (CMOs), and an amendment which included an actual percentage for royalties for musicians), therefore responding to problems that arose. This contrasts with processes based on a single, big copyright law amendment. This is also related to the multiple origins of legislative reform in Kenya: KECOBO can propose an amendment, but it could also come from a Parliamentary Party, individual members of Parliament, the government, among others.

In Kenya, politically there were a lot of interest in the reform of the law, which necessitated all these different amendments. There is a proposal to unite the IP office and the Anti-Counterfeit Agency in Kenya. Kenya has a new government since last year; it is unclear whether the copyright reform will be a priority. Mrs. Chahale Wata noted that KECOBO also issues advisory opinions – these are not rules nor legal opinions but provide information and advice for users and institutions on relevant copyright matters.

She also noted that Kenya has attempted to domesticate treaties the country ratified. For example, the Marrakesh Treaty was domesticated and there is an explicit L&E related to that. Kenya also has L&Es for libraries, archives, and educational institutes – with the goal of balancing the rights of users and right-holders. Finally, she described how legal reform may be treated in courts. Backlash is part of the process of amending laws, she added. The Kenyan constitution since 2010 contains a provision on the protection of IP, but it also has provisions

on culture, health, among others. The Bill of Rights and the Constitution have been therefore important elements in the legal debate.

Ms. Elizabeth Nyagura, Deputy Director General, Zimbabwe Intellectual Property Office (ZIPO), described the Zimbabwean law and practice on L&Es. She noted that while there are clearly L&Es for many purposes, there is a gap in the current legislation, as it does not have a provision on access to copyrighted materials for the visually impaired, neither for access in the digital environment, and also no provisions on resale or protection of technological protection mechanisms (TPMs). Balance between users and rightsholders is always needed, she said. The legislative reform process is taking place since 2019, which started with a work on principles. Ms. Nyagura highlighted that the new legislation should solve the problems identified, including provisions on L&Es for the visually impaired and print disabled, since Zimbabwe acceded to the Marrakesh Treaty. The new legislation will also create a separate copyright commission.

She highlighted the IP Office's work on awareness, since they found out many people are unaware of the existing L&Es and what they can lawfully do. Accordingly, they are carrying out awareness programs to sensitize not only on industrial property but also on copyrights, including L&Es. The ZIPO's intention is overall to amplify awareness. In addition, the very implementation of the law can be difficult, but the creation of a new institution would contribute to address it. Finally, she also noted that ZIPO may submit *amicus curiae* to assist or give advice to courts on copyright matters.

Prof. Joseph Fometeu, University of Ngaoundéré, Cameroon, asked whether the copyright offices were clarifying existing L&Es or creating new L&Es. That question is important to deepen the discussion. The 'the right to research' is in the conference title: what is the scope and nature of such a right? Especially in civil law countries, including francophone African countries, it has been emphasized that a limitation or exception is *not* a right. If you promote the creation of a right (e.g., the right to research) you have a right facing another right (copyright), which is different from having a limitation or exception to a right. He highlighted that all those involved in the system should be taken into account in such discussions – for example, a copyright holder needs both recognition and reward.

He also addressed the issue of the multi-scale levels in which the debates take place: (i) national – the Berne Convention empowers countries to adopt L&Es; (ii) regional - there is both the African Regional Intellectual Property Organization (ARIPO) and OAPI (*Organisation Africaine de la Propriété Intellectuelle*) in Africa; (iii) international - including WIPO; and (iv) technical, the operation of the copyright system.

He provided a reflection on where the copyright system is headed, expressing that nowadays everything can be copyrighted - even 'nothing' can be copyrighted (giving the example of one work of art which was actually a white blank painting, which sold for millions of Euros).

Mr. Jace Nair, Chief Executive Officer (CEO), Blind SA, described the historical facts and the advocacy undertaken by Blind SA that led to the Constitutional Court of South Africa's decision on the Copyright Bill. He addressed the need to include the rights of peoples with disabilities into the discussion, and described how the coalition of different actors, with the leadership of Blind SA, led to the successful court decision which strongly expanded L&Es in South Africa. He also related this process to the ongoing Copyright Bill proposal in South Africa, which should further amplify L&Es in a significant manner. The lessons from their

advocacy and from their case can be useful to other countries and should also be taken into account in the legislative amendment process.



University of Pretoria

II. Strengthening the Voices of Africa & the Global South: New Directions in WIPO, AfCFTA and Copyright in Africa. Facilitating science, creativity and innovation: South Centre Public Session (University of Cape Town)



Second South Centre Public Session at the University of Cape Town

The second public session, held on 26 January 2023 in Cape Town, questioned how to ensure that African and Global South voices, including indigenous and minority voices, are amplified. The discussion, taking stock of the previous discussions of the conference, brought together the global, the regional, the national and the local levels to reflect on a future copyright agenda focused on development, diversity, and the public interest. It was also moderated by **Dr. Viviana Muñoz-Tellez**, Coordinator, HIPB, South Centre.

Dr. Vitor Ido, Programme Officer, HIPB Programme of the South Centre, focused his intervention on elements to narrow down the knowledge and informational gap between multilateral and national processes. He started by noting that such gap is structural, as Global South – and especially African voices – have limited financial resources to join meetings, access information, etc. Accordingly, although meetings are important, structural change is also needed. Secondly, he noted that various copyright issues are dealt with at multiple policy arenas and not just at the WIPO SCCR (such as issues of TK and TCEs) but also at the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Telecommunications Union (ITU), the World Trade Organization (WTO) TRIPS Council, the Internet Corporation for Assigned Names and Numbers (ICANN), among others. Understanding the interplay between these fora, including how to develop common strategies and arguments, is fundamental. Thirdly, he discussed how these different levels interact: legislative amendments may have impacts on other countries, landmark concrete cases (such as the Blind SA Constitutional Court case in South Africa) can influence other jurisdictions and, of course, regional and international law has an effect at the domestic level. In this sense, the African Continental Free Trade Area (AfCFTA) may provide a new paradigm for Africa, and so could an international treaty on L&Es at WIPO. He concluded by noting that diversity is crucial for achieving public interest outcomes in copyright, and that while the participation of more people is a prerequisite to that, simply involving more people without structural change can be tokenistic (i.e., a change without any real change).

Dr. Sanya Samtani, Senior Researcher at the Mandela Institute in the Law Faculty of the University of the Witwatersrand, Johannesburg, focused on how Africa can use human rights instruments to strengthen its right to research and public interest in copyright law. After developing the scope and applicability of the human right to science, and its educational component, she noted the possible benefits of making use of human rights arguments in copyright cases. Acknowledging the limitations of the international economic law regime to accept human rights arguments – despite the same level of hierarchy between trade and human rights treaties from an international law point of view –, she mentioned how such arguments can be advanced in national courts, such as in the Blind SA Constitutional Court case in South Africa. This could in turn facilitate international processes, she said.

Prof. Sean Flynn, American University Washington College of Law, described the variety of copyright law approaches countries may use to enable preservation and uses of research materials. Referring to the different cases and debates throughout the conference, he mentioned the potentials and caveats of different models, noting that they are complementary to each other. For example, legislative reforms can be more comprehensive than international treaties (which need to reach a broader compromise), but also court rulings may be very effective, or simply private uses and policies (such as when a library or archive decides to start digitizing its materials, for example). It also relates to the different

actors involved and their own priorities. He further noted that while the current copyright system would hardly disappear from the world (and it's not even a question of whether it should), the advancement of the L&Es agenda is a way to take the system to its very roots, since copyrights were created not to provide exclusive monopolies, but to promote creativity.

Prof. Dick Kawooya, School of Information Science, University of South Carolina, and Ms. Teresa Hackett, Copyright and Libraries Programme Manager, Electronic Information for Libraries (EIFL), provided a historical and strategic overview of what processes at WIPO are addressing issues related to copyright user rights, including for preservation, research, and cultural heritage institutions. They mentioned the importance of the African leadership and the opportunities ahead, as well as the various processes which already took place at the WIPO SCCR committee in particular. They should be used to the benefit of the expansion and advancement of the L&Es agenda, they concluded.

Prof. Caroline Ncube, DSI-NRF SARChI Research Chair: Intellectual Property, Innovation & Development, University of Cape Town (UCT), discussed the objectives which African negotiators are pursuing in relation to copyright and research issues in the upcoming AfCFTA IP Protocol. Such negotiations are expected to conclude in 2023, take into account priorities for the African continent (including L&Es) and reflect the experiences of regional organizations (ARIPO and OAPI). As an outcome of a free trade agreement negotiation, this framing is the very basis for the discussion of IP, including copyrights. Accordingly, it is equally expected that the outcome will necessarily be a compromise between Member States, a realistic rather than 'ideal' text. It is however expected that this text, with respect to copyright L&Es, will sufficiently include them and truly favor the development of the African continent.

Prof. Desmond Oriakhogba, University of Venda, South Africa, addressed how the recognition of the right to research can contribute to Africa's digital transformation. He further developed the argument on the right to research as part of a human rights framing and provided concrete examples of how the possibility to effectively conduct research is both beneficial and necessary to ensure that African stakeholders benefit, rather than simply are affected by, the digital transformation. This also needs to be tied to other policies which include, among others, capacity-building and improved infrastructure. He noted, however, how an enabling framework is needed for that ultimate goal of promoting digital transformation.

As a discussant, **Prof. Tobias Schonwetter, Director, IP Unit, Faculty of Law, UCT**, focused his remarks on potential challenges in overcoming differences, such as the approach on copyright adopted between common law and civil law countries (francophone and lusophone) in Africa. **Mr. Hanani Hlomani, Researcher, IP Unit, Faculty of Law, UCT**, reflected more broadly on the possibility of a real decolonization of the copyright system to the benefit of Africa, considering the intrinsic intertwinement between its origins and the colonial system.

Prof. Jeremy de Beer, University of Ottawa, Centre for Law, Technology and Society, highlighted the importance to align the discussions on copyright L&Es with the emerging issue of benefit sharing in digital sequencing information (DSI) of genetic resources (GRs), which are mainly discussed at the Convention on Biological Diversity (CBD). Most of access to GRs is nowadays conducted via digital databases, and not via physical access to materials,

which may prevent any form of benefit sharing regarding genetic resources. It is important to make sure that copyright L&Es do not further promote such process.

Finally, **Prof. Allan Rocha, Federal University of Rio De Janeiro**, emphasized what countries and institutions can already do, sometimes even despite existing legislative frameworks. He gave the example of contractual agreements by Fiocruz, in Brazil, which ensure that they would have access to the full information/databases, in transnational partnerships, including scientific outputs and the possibility for Fiocruz to have access to the whole database generated during the scientific endeavor. This is an innovative contractual mechanism that in many ways compensates the lack of sufficient L&Es in national laws. He also emphasized that oftentimes institutions will also not sue others (such as libraries or universities) for alleged copyright infringement, given the potential negative repercussions of such proceedings, particularly in cases in which the use of copyrighted material is done for non-commercial purposes. It would be better to have robust L&Es so that the risk of such litigation do not exist, but these examples provide avenues for stakeholders to work with existing legislations.



University of Cape Town

III. Snapshot of other sessions

Various other events were part of the week of debates. In Pretoria: Digital research tools - what's happening in Africa?; Does Africa have a Right to Research in Law?; an event with South African vocalist Marah Louw and messages from South African creatives; Public Resources Create Public Information | preferred copyright licenses; Public Resources Create Public Information | Open data and the importance of open copyright for structured data (databases); Blind SA Workshop and Launch; Making the Copyright Amendment Bill work in South Africa. In Cape Town: After the Fires: Digitising our Heritage; Access to Knowledge in Africa: Health, Culture and Artificial Intelligence; Wikipedia Workshop or Edit-athon; Making

the Copyright Amendment Bill work in South Africa: Provincial Hearings in the Western Cape and Other Provinces.



Renowned South African vocalist Marah Louw



Renowned South African DJ Ready D

Some highlights of the discussions include:

- The laws and practices of African countries are often not suitable to the full enjoyment of L&Es for research (as well as preservation and other public-related goals) further reinforcing the major inequalities between rich countries and Africa. This means that legislations are not equipped or are ambiguous with respect to the L&Es for users, and also that users are not sufficiently aware of the rights to make use of copyrighted materials.
- The current international landscape is equally not conducive to the use of L&Es, given that most international copyright treaties – including those administered by WIPO, such as the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) – are focused exclusively on enhancing the protection of

copyrights rather than enabling access to knowledge (the Marrakesh Treaty, which favors blind and visually impaired, being the sole exception).

- There is therefore room for legislative reform focused on the public interest and expansion of L&Es at the national level (which is taking place in many countries, such as South Africa, Nigeria, Kenya and Uganda), for regional IP organizations (ARIPO and OAPI) to expand work in this area, for the AfCFTA to set a positive precedent at the continental level, and for binding or other legal instruments at WIPO to promote L&Es in the public interest, including to enable research, education and preservation.
- The 10-year and still ongoing experience for copyright reform in South Africa was debated, highlighting the coalition of multiple actors advocating for it. The copyright bill proposal is based on two pillars: fair remuneration for creators and limitations and exceptions for ample use of knowledge. In other words, the reform – similarly to other processes across the Continent – includes measures to ensure that both creators are fairly compensated and that users can research, educate and innovate to the benefit of the public at large.
- In a series of concrete cases in Africa, copyright barriers have been an impeditive to research – for example, Masakhane, an organization using text and data mining (TDM) to advance translation tools into/from African languages, has been impeded by Jehovah Witnesses (who had translated Bibles into African languages) from using such content for research purposes. Several other examples were presented and discussed, which show how Africa’s full potential cannot be unleashed without an enabling copyright system (without disregarding structural factors which remain equally important, such as infrastructure and digital transformation).
- A core issue is how to translate local processes into broader ones, including at regional and multilateral fora. The AfCFTA IP protocol and the WIPO SCCR are two prominent areas for such reflection. Simultaneously, it is important that national legislative copyright reforms take place as there is a lot of policy space that needs to be enjoyed – concrete examples in that regard were shared (South Africa, Nigeria, Kenya, Zimbabwe, Uganda).
- The use of human rights, particularly the right to education and the right of persons with disabilities, provides an important framework to ensuring that copyright laws include sufficient L&Es. The recent South African Constitutional Court decision in 2022, in a case filed by Blind SA, a leading CSO in the country, ruled that the current law needs to ensure access to blind and other visually impaired via an expanded set of L&Es for copyright, thus fulfilling human fundamental rights.
- Cultural heritage protection is another clear area where copyright L&Es are needed – and this takes place against the backdrop of two massive fires in South Africa which burnt down part of the University of Cape Town library and the Parliament’s library. Besides financial constraints, many institutions in the African continent, including libraries and archives, are not allowed or are uncertain whether they are allowed to digitize content for preservation.
- Innovative contractual and licensing mechanisms can at times work around insufficient L&Es – but the same instruments may also impede the enjoyment of existing L&Es. Therefore, the private law dimension of L&Es needs also to be taken into account.
- The issue of L&Es has multiple intersects, including those with health-related research, the promotion of digital transformation and Artificial Intelligence (AI) (given the need to have access to large datasets), as well as culture (including cultural appropriation).
- There is need to coordinate the current discussion on L&Es with at least three main issues: (i) the protection of TK and TCEs at WIPO – where L&Es are proposed by

developed countries as a way to limit protection for TK and TCEs; (ii) the issue of benefit sharing in access to digital sequence information (DSI); (iii) the possibility of reinforcing market power of dominant tech firms via text and data mining, including in what can be conceived as ‘data colonialism’. Ensuring that L&Es prevent this is paramount.

- There is a need to decolonize the copyright system to the benefit of Africans and Africa, and to the global public interest at large.



Conference participants in Pretoria



Group photo with the Nelson Mandela Statue at the Union Buildings, Pretoria



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Event Posters by ReCreate South Africa

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