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Director General, Department of Trade and Industry
FAO Ms Meshendri Padayachy
Private Bag X84
Pretoria 0001, South Africa

16th September 2015

Re: Call for Comments, Copyright Amendment Bill 2015

Dear Ms Padayachy,

EIFL (Electronic Information for Libraries) works with libraries to enable access to knowledge in developing and transition economy countries in Africa, Asia Pacific, Europe and Latin America. The EIFL Copyright and Libraries programme advocates for a fair copyright system, and supports librarians to become advocates for access to knowledge.

We thank the Department of Trade and Industry for the opportunity to comment on the Copyright Amendment Bill 2015.

Libraries and copyright

EIFL commends the stated purpose of the Bill to increase access to knowledge, education and learning materials, and for persons with disabilities.

The delivery of high-quality library and information services helps guarantee universal and equitable access to information and ideas that people, communities and organizations need for their social, educational, cultural, democratic, and economic advancement.

Digital technologies have transformed how people access and use information for education, research and leisure, and how libraries operate. Technological developments, such as mobile devices and cloud computing provide libraries everywhere with opportunities to develop innovative new services¹, especially for those underserved by print resources or who live in rural or remote regions.

¹ For example, setting young people on secure career paths in Masiphumelele Public Library near Cape Town, the only place providing free access to computers, the internet and training support: www.eifl.net/eifl-in-action/setting-young-people-secure-career-paths

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To fulfil the promise of the digital age, libraries need a copyright law that is forward-looking and embraces technological change - a law that enables improved services to our communities, such as support for online distance education, electronic document delivery, and new activities that facilitate the public service mission of libraries.

EIFL comments

EIFL endorses the ‘Joint Academic Comments on the South African Copyright Amendment Bill, 2015’², the product of a collaboration by an international team of academics from South Africa and the US.

The EIFL Draft Law on Copyright (2014)³, also the result of an international consultation, is used to help inform the Joint Academic Comments mentioned above.

In addition, we would like to comment on the relationship between contract terms and copyright limitations and exceptions.

Libraries understand that licences are part of the information ecosystem. Globally libraries spend billions of dollars each year on licensed content for electronic resources.

We also believe that copyright law has an important place in the digital environment. That is why we seek to uphold limitations and exceptions in licences for digital content. Limitations and exceptions are carefully designed by the legislator as part of a balanced copyright system for the benefit of society as a whole (often through a public process such as the current DTI consultation).

When licence terms in contracts - that are often subject to confidentiality clauses - take away uses permitted by national copyright law⁴, the legislator has effectively no role in how access to electronic information for education, research and innovation is determined. Yet the future is digital.

EIFL therefore welcomes Section 39A of the Bill, that we believe is critical to ensuring public access to knowledge in the digital environment.

² <http://infojustice.org/archives/35003#more-35003>

³ <http://eifl.net/resources/eifl-draft-law-copyright-including-model-exceptions-and-limitations-libraries-and-their>

⁴ A British Library survey of 100 of contracts for electronic resources found that more than 90% had terms of use that were more restrictive than exceptions in UK copyright law

A provision with similar effect can be found in other laws. Limitations and exceptions are protected from override by contract terms in European Union Directives⁵, and the copyright laws of Belgium, Ireland, Portugal and most recently, the UK (2014).

Copyright developments beyond South Africa

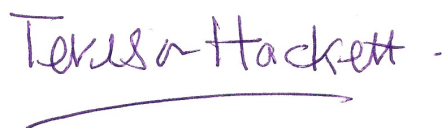
Developments in national copyright law in South Africa are an important exemplar for libraries in other countries, in particular the developing and transition economy countries in which EIFL works⁶.

We value the leadership role of South Africa in international fora such as the World Intellectual Property Organization (WIPO), and appreciate proposals by the African Group on limitations and exceptions for libraries and archives at the Standing Committee on Copyright and Related Rights⁷.

Our comments are made in the interests of libraries and the people who use libraries. We look forward to a positive outcome that benefits education, innovation, and development.

Please do not hesitate to contact me if you have any questions.

Yours faithfully



Teresa Hackett
EIFL Copyright and Libraries Programme Manager

⁵ Legal Protection of Databases (Directive 96/9/EC) and Legal Protection of Computer Programs (Directive 2009/24/EC)

⁶ <http://eifl.net/where-we-work>

⁷ http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=242388