



Country report – South Africa

Annual report to the IFLA CLM committee
Singapore 2013

This report is a short account of the following activities:

Copyright

No recent changes have been made to the Copyright legislation (also see comments under Traditional Knowledge below).

The Department of Trade and Industry held its Africa IP Forum on 26 and 27 February 2013 in Midrand, for all stakeholders. In his address, the Minister of Trade and Industry, Mr Rob Davies, confirmed that an IP Policy Framework was being developed by the DTI and would be made public during the course of 2013. See presentations at the African IP Forum at: http://www.thedti.gov.za/business_regulation/business_regulation.jsp. On 24 April 2013, Mr. Rob Davies, however, stated that the IP Policy would not be released to the public for comment 'any time soon'. See article by Infojustice.org entitled *South Africa's Department of Trade and Industry Reneges on IP Policy Commitments* at: <http://infojustice.org/archives/29481>. This means a further delay in any possible amendments to the Copyright legislation.

New legislation – None

Proposed legislation

- **Traditional Knowledge**
 - **Intellectual Property Amendment Bill (TK)**

The Department of Trade and Industry (DTI) published its Intellectual Property Amendment Bill in 2009, and held several public hearings around the country to discuss this Bill. Under the Intellectual Property Laws Amendment Bill, the South African Copyright Act (1978), the Performers Protection Act (1967), the Trade Mark Act (1993), and the Design Act (1993) would be amended to include certain forms of traditional knowledge protection under the premises of the respective Acts. It was amended several times due to strong criticism and concerns about various issues in the Bill from stakeholders (including libraries and educational institutions) across the board. As a result, the DTI engaged an independent organisation to conduct a Regulatory Impact Assessment on the Bill in 2009. Comments by WIPO and the Regulatory Impact Assessment Report can be found at the bottom of the article at <http://blogs.sun.ac.za/iplaw/2013/04/22/letting-the-copyright-cat-out-of-the-bag/>

Despite this, the DTI submitted the Bill to Parliament and it was passed by the National Assembly in 2010, in terms of Section 75 of the Constitution. However, in March 2013, President Jacob Zuma declined to sign this Bill and ordered that it be returned to Parliament for consideration by the House of Traditional Leaders. The Parliamentary Portfolio Committee maintains that this Bill has been appropriately passed and should not be re-opened for further public comment.

In June 2013, it was agreed that the DTI would present the Bill to the Provincial Legislatures for their consideration. Once the DTI is done with the presentations, the Legislatures will report back to the National Council of Provinces. The DTI seems determined to pass the Intellectual Property Amendment Bill [now B9-2010], regardless of general opposition to the Bill.

- ***Draft Protection of Traditional Knowledge Bill (alternative Bill)***

In the meantime, a second Bill, the Draft Protection of Traditional Knowledge Bill was drafted by Prof. Owen Dean, Chair of IP Law at the University of Stellenbosch. It was tabled in Parliament by MP, Dr Wilmot James, and then published for public comment on 9 April 2013. This Bill provides an alternative option to the DTI's abovementioned Intellectual Property Amendment Bill. It provides 'sui generis' legislation to protect traditional knowledge, rather than it being incorporated in the current intellectual property laws, i.e. the Copyright Act (1978), Performers Protection Act (1967), Trade Mark Act (1993), and Design Act (1993). This Bill can be found at: http://blogs.sun.ac.za/iplaw/files/2013/04/36354_9-4_ParliamentSA.pdf

It is hoped that a positive solution will be found to address Traditional Knowledge in South Africa, without affecting the existing IP legislation and without shrinking the public domain and affecting access to knowledge and access to cultural heritage.

Pending legislative issues

Nothing to report on at this stage, apart from abovementioned TK Bills.

Legal Matters

New legislation

- ***The Protection of State Information Act***

The National Assembly passed the Protection of State of Information Act on 25 April 2013 (originally called the Protection of Information Bill). This legislation aims to regulate the classification of State information. Earlier drafts were widely condemned by the media, civil society and stakeholders across the board, including libraries and educational institutions. See statement which I drafted for the Library and Information Association of South Africa (LIASA) - <http://www.liasa.org.za/node/261>

This Bill (dubbed the "Secrecy Bill") is seen to undermine the right to access information of public interest. The current version has been improved but is still flawed in many ways. There are also key concerns about State secrecy and classification of information, as well as questions about the protection of whistleblowers and journalists with regard to sensitive issues such as corruption. The classification of State information is of particular concern to libraries and archives, and educational institutions.

Law cases

I am not aware of any copyright cases relevant to libraries or education during 2012/2013.

Advocacy/Lobbying activities –

- ***Africa IP Forum***

In my plenary session presentation at the Africa IP Forum on 27 February 2013, I challenged the DTI on its failure to amend the Copyright legislation. I reminded the DTI (and the Department of Arts & Culture which was represented on the same platform with me) and conference delegates (including WIPO officials) that the educational and library sectors had been lobbying since 1998 for change in our Copyright Laws, and that their IP Policy Framework had been on the DTI's agenda for more than 10 years, yet nothing has happened to date. Here is an overview of my presentation at the Forum – see: <http://afro-ip.blogspot.com/2013/03/africa-ip-forum-2013-reflections-denise.html>.

- ***Presentation to SA Government***

On 5 November 2012, I was invited to present on Copyright Limitations and Exceptions to the Department of Arts and Culture and the Department of Trade & Industry/Companies and Intellectual Property Commission (CICP)'s Bilateral Meeting on IP and WIPO Issues in Pretoria. I discussed the Treaty on Copyright Limitations and Exceptions for Libraries and Archives (TLIB) and asked both Departments to support this and other Treaties currently under discussion at WIPO.

- ***Crimea Conference, Sudak (2-10 June 2012)***

I was invited by IFLA and the Coordinating Committee of the 19th Crimean Conference to present on the TLIB at the IFLA IP Forum at their 2012 conference in Sudak, Autonomous Republic of Ukraine. In Ingrid Parent's absence, I also delivered her papers at various sessions at this conference. In my presentation, I called on delegates to promote the TLIB and other Treaties for Limitations and Exceptions at WIPO to their Government officials and WIPO Missions. At the end of my presentation, there was a discussion session and I collected several suggestions and concerns expressed by Russian and Ukrainian Librarians. These were sent to Stuart Hamilton at IFLA Head-office.

- ***LIASA Statement Supporting the TVI***

I was invited by the Library and Information Association of South Africa (LIASA) to draft a Statement in support of the WIPO Treaty for the Blind, Visually Impaired and Other Reading Disabled Persons in support of the TVI. This was published on its website at <http://www.liasa.org.za/node/1044>, and was also distributed via LIASA, IFLA and other listservs and via my information service "Copyright & A2K Issues" (see: <http://www.africanlii.org/blogs/denise/copyright-a2k-issues-4-june-2013>).

Educational activities

- I continued to give workshops during 2012/2013 for staff and students at my institution on copyright limitations and exceptions (though very limited in our current Copyright Law) and promoted Open Access and Open Educational Resources. I encouraged my institution to adopt and sign the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities at an Open Access Seminar which I helped co-organise on 9 November 2012. Through my promotion of an Author's Addendum, our Legal Office drafted an Addendum to Publishers' Agreements, adapted from the SPARC Author's Addendum. This was launched at the Open Access seminar on 9 November 2012. I sent a copy of the Addendum and an Information Sheet on Open Access to all our academics in April 2013, together with my copyright brochure. I have also held several workshops on campus for academic staff to promote Open Access (Gold without charge and Green Routes) and our Institutional Repository, WIREDSPACE.

- I gave a workshop on Copyright, Open Access and Open Educational Resources to an NGO publisher, READ Educational Trust in Ormonde, Johannesburg, on 29 May 2013.
- In April 2013, I updated my Copyright brochure for all our academic staff and students and distributed them on campus. I also updated my Copyright leaflet for Government and Private Schools during April 2013 and sent them to the National Department of Education and the Independent Schools of South Africa Association (ISASA) for distribution to their schools. In the leaflet, I highlighted limitations and exceptions allowed in our Copyright Law (though limited), as previous handouts that they have received from the publishing industry have focused on infringement rather than permitted limitations and exceptions for educational purposes.
- I am a member of the SA National Council for the Blind's Copyright Workgroup and during the course of 2012/2013, I have contributed to discussions and documents relating to the TVI at WIPO. Was invited to attend the WIPO Diplomatic Conference in Morocco in June 2013, but was unable to attend.

Strategic plans for the future

- South Africa continues to play a leading role in the Africa Group at WIPO and is currently participating in the WIPO Diplomatic Conference to adopt a Treaty for the Visually Impaired (TVI) in Marrakesh, Morocco (17-28 June 2013). South Africa is also 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 and will participate in the WIPO SCCR meetings from 29 July 2013 to 2 August 2013.
- 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" (<http://www.africanlii.org/blogs/denise>) and workshops, where possible.

Other issues

- I graduated with a Master of Laws (LLM) degree from the University of the Witwatersrand, Johannesburg, on 10 December 2012. My Dissertation Title is "*Accommodating Persons with Sensory Disabilities in South African Copyright Law*". This is available on our institutional repository, WIReDSPACE, at <http://wiredspace.wits.ac.za/handle/10539/12525>. I sent copies of this dissertation to the Chief Director: IP Office in the DTI, for consideration when the Copyright laws are eventually amended.
- I recently updated my various LibGuides, including those on Copyright, Open Access, Open Educational Resources, Digitisation, Preservation, Curation and Data Management, Resources for Persons with Sensory Disabilities, etc. See: <http://libguides.wits.ac.za/profile/copyright>