

## **Constitutional Court & Blind SA: Court delivers unanimous decision on access to published works**

### **PASA Statement, 23 September 2022**

The Constitutional Court on 21 September 2022 delivered a unanimous decision in favour of Blind SA to allow print-impaired persons access to reading materials. Blind SA has been in a long-standing battle to ensure disabled persons' rights.

The Constitutional Court responded to Blind SA's application to have the current Copyright Act declared unconstitutional and wording read into the Act which would allow print-impaired persons access to reading materials without the authorisation of copyright owners. Blind SA's bid was to have section 19D of the Copyright Amendment Bill now before Parliament read into the current Copyright Act.

In an insightful judgment written by Mr Justice David Unterhalter, the Constitutional Court declined to declare the entire Copyright Act unconstitutional. Instead, the Court decided that only the three sections that grant exclusive rights to authors of literary and artistic works are unconstitutional to the extent that they prevent the making of accessible format copies of published literary works and embedded artistic works without authorisation.

The Court also found that Blind SA had not made out a case to justify reading into South African law the proposed wording from section 19D of the controversial Copyright Amendment Bill. The Court rather turned to the submission from the friend of the Court, Dr Owen Dean, which put forward an original proposal for regulations to be promulgated in terms of section 13A of the current Act. The Constitutional Court judges formulated new, clearer wording to be read into the current Act as a new section 13A which in large measure is derived from the text proposed by Dr Dean.

The Court also issued an order to give effect to the judgment: Government must fix the unconstitutional aspects of the Act within 24 months of the judgment. In the meantime, the declaration of unconstitutionality is suspended, and the new wording included in the order shall be deemed to be included as section 13A in the Act.

Print-impaired persons, like blind persons, will now be able to convert printed literary works into accessible formats without the permission of the copyright holder.

PASA welcomes this outcome as PASA has consistently and over many years acknowledged the plight of print-impaired persons and their right to have access to reading materials at the same time and at no higher costs than sighted persons. The Association urges all to support the immediate implementation of the Constitutional Court order.