An open letter to the Minister of Trade & Industry

Dear Minister Davies

CONCERNS REGARDING COPYRIGHT AMENDMENT BILL

We write to you on behalf of a coalition of writers, book and music publishers, film directors, producers, music artists, performing artists, film and television workers, content creators and business people operating in the publishing and creative industries. We have deep concerns about the Copyright Amendment Bill currently before parliament, which you and your department have been so instrumental in drawing up.

We appreciate the need for new copyright laws, and the Bill's commendable goal of widening access to knowledge and ideas by allowing the reuse of published material. However, we are concerned that in the years since the Copyright Review Commission Report, which set out to uphold the rights of creative artists, the Bill has changed character and now carries unintended negative consequences.

You have stated in correspondence to some of our member organisations that "the cost of procuring education material in South Africa is very high, therefore flexibilities will be incorporated with teaching exceptions."

Our concern is that these "flexibilities" or exceptions from copyright protection will have a devastating impact on the publishing industries. In the creative industries, the Bill creates uncertainty around ownership and royalties and also permits free re-use, threatening production investment. We believe that the Copyright Amendment Bill ...

1. **Is vague and imprecise,** and will need to be tested in the courts over several years, requiring content creators to fight to defend rights that should be theirs automatically, requiring resources of money and time that they do not have. The Bill creates great uncertainty on how royalties will be shared by content producers, which may also require litigation to resolve.

2. **Will mean content creators will be unable to derive financial benefit from their own work.** This will remove the incentive to write, produce and publish works, since the Bill allows it to be copied and republished with impunity, often free of charge.

3. **Will lead to job losses.** As academic publishing becomes less financially viable, publishers will close, and jobs will be lost. A socio-economic impact assessment by the Publishers' Association of South Africa (Pasa) and PWC found that 1 250 publishing jobs – 30% of jobs in the industry – would be lost. Uncertainty around how ownership of cinematic works will be determined, could threaten the South African film industry. The NFVF report, "The Economic Impact of the South African Film Industry 2017" reveals that in total, the operations of the film industry in South Africa raised the level of production by approximately R12,2 billion. A drop in investment in this sector would have a dire impact on jobs, international coproduction, and the future of creative output in our country.

4. **Will damage satellite industries.** For film and television, the bill will mean limited revenues for projects that are costly. This will have a knock-on effect, damaging the numerous service industries that support productions, especially in the Western Cape.

5. **Will reduce South Africa's body of knowledge.** When the publication of academic writing and research no longer pays, South African writers will stop writing, and publishers will stop publishing. This will mean less South African content will be available. Imported foreign material will fill the gap, leaving our students to learn generic ideas from the global north not strictly applicable to the African and South African situation.

6. **Will benefit only the international tech corporations,** which will be able to access and republish creative and research work without having to pay fair royalties or usage fees and then monetise it by licensing it or selling advertising around it.

The Bill is an incredibly complex piece of legislation and there is a broad unhappiness in our industry with the Bill – across academia, publishing, the writing sector, artists, filmmakers, music producers and other professions.

The feeling is that the Bill has lost sight of its original intention to protect creators' rights and ensure they are fairly remunerated. The Bill, as it stands, will undermine these rights by allowing their work to be republished without compensation, or by creating massive confusion.

In the music sector, the Bill also creates uncertainty around how royalties will be calculated and shared amongst the creators of artistic works – and whether indeed these will be viable.

Record companies are the main source of investment in a continuous supply of new recordings by South African performers. Through their sustained investment in new artist signings, record companies record and release new recordings on a weekly basis. If the viability of the recording industry is diminished, as it will be if certain of the provisions of the Bill are enacted into legislation, the entire music-sector ecosystem will be negatively impacted.

The negative impact will primarily be felt by up-and-coming young South African musicians, fewer of whom will be offered recording contracts, and by small and medium-sized record companies who will not have the financial strength to invest in new recordings by young artists as they currently do.

Proposals to limit the term of transfer agreements to 25 years, for example, or to import US-style fair use into South African law, will substantially reduce investment in South African music productions and reduce the ability of all creators (performers, authors and producers) to secure fair revenues from uses of their works. This cannot be the intention of our Government and the proposed legislation.

Economic independence for the creators who enrich our culture and inspire our youth is fundamental to freedom of expression and the transfer of new ideas across generations. When writers can no longer afford to commit themselves exclusively to writing, or musicians to creating music, we are all made poorer.

We support the ideal of allowing users to access knowledge and artistic works inexpensively. However, this should not happen in a way that undermines the very production of works and makes it no longer viable.

If publishing academic texts is no longer worthwhile, it will be detrimental to learners too. The knowledge they will then be exposed to will be hegemonic imported ideas, reducing their understanding of uniquely South African perspectives and irretrievably setting back the decolonisation project.

The Copyright Amendment Bill threatens to harm the very people it aims to protect – the producers of creative content and ideas. We implore you to intervene, raise these issues with the president and do what you can to ensure that the rights of users to access knowledge are balanced with the rights of content creators to earn a living from their work.

If you would like to discuss this matter further, we would be grateful for the opportunity to address our concerns with you.

Yours sincerely

Independent Black Filmmakers Collective, Kagiso Media, Sheer Music, Media24 Books, Warner Music, Shuter & Shooter, Juta & Company, DALRO – Dramatic, Artistic & Literary Rights Organisation, RiSA – Recording Industry of South Africa, Sony Music, Music Publishers' Association of South Africa, NB Publishers, Universal Music, Publishers' Association of South Africa, Sony/ATV, The David Gresham Entertainment Group, Pearson South Africa, Future Managers, Printing SA – Federation of Printing & Packaging, ANFASA – Academic and Non-Fiction Authors' Association of South Africa, VANSA – Visual Arts Network of South Africa

THE COPYRIGHT AMENDMENT BILL

HOW THE KNOWLEDGE SECTOR WILL SUFFER

If the Copyright Amendment Bill no. 17 of 2017 (CAB) is signed into law in its current form, there will be many losers – including many of those it is meant to help!

Authors

- Authors will lose royalties.
- Authors may not always be cited as creators of their work.
- Will have to resort to the courts – if they can afford to – to challenge excessive re-use of their works.
- Will struggle to be published, as local publishing houses close.
- Will lose the incentive to write and share their knowledge and insight.

Publishers

- Publishing jobs will be lost.
- Publishers' income stream from secondary licensing – the re-use of content – will vanish.
- As turnover and the incentive to publish vanishes, fewer books will be published.
- Many publishers will close.
- Publishers' income will drop as works for education are copied and republished without payment.
- More than R2 billion in sales will be lost.

Libraries

- Will have less choice in materials as fewer South African books are published.
- Will have to start substituting South African educational material with generic, sub-standard international works.
- Will run the risk of becoming embroiled in expensive, drawn-out lawsuits, as some publishers resort to the courts to protect their rights.

Students

- Will have reduced access to works by South African authors as these become scarcer.
- Will be forced to pay more for imported books, as these become the only available options.
- Will be robbed of the African knowledge and relevant ideas that should be their birthright.
- Will develop foreign perspectives as the neo-colonial effects of import-substitution in academic publishing take hold.

Booksellers

- The viability of bookshops, both brick-and-mortar and online, will be threatened.
- Will have to pay more to import foreign literature.
- Will diversify into other media, marginalizing books and book culture.
- Will suffer losses as fewer books are published and sales decline.
- Will suffer further losses as cheap, grey imports of books will flood the market.

The South African People

- Will lose our distinctive national body of knowledge.
- South Africa's reading culture will wither.
- Will be intellectually colonised by dominant discourse disseminated digitally by the global north.
- Will become less able to compete in the global knowledge and digital economy.

Film and television workers

- Will face uncertainty because of the imprecise Bill. This will discourage foreign direct investment in large productions.
- Satellite industries – hospitality, catering, production, etc – will suffer financially as the industry's R12bn GDP contribution shrinks.
- The decline of profitable large productions – which subsidise smaller projects – will mean less funding for original content.
- Will have to negotiate the complex sharing of royalties among all participants in productions such as music videos.
- What is the revenue stream for small, independent productions if everything is shared for free?

Musicians & Songwriters

- Will have rights (in respect of performances) downgraded to mere remuneration rights, instead of exclusive rights in line with WIPO Treaties.
- Will face uncertainty over licensing, management and collection of royalties with the introduction of Fair Use.
- Will lose out when royalties are paid from "gross profits" of works, instead of from revenue.
- Will face incredible complexity, as the Bill dictates all participants in productions such as music videos must get royalties, instead of once-off payments.
- Will face confusion between performers and copyright owners due to the fragmentation of rights after 25 years.
- Will grant tech multinationals and "users" more commercial rights on their copyright protected materials.

Don't let it happen! Copyright protection is what encourages knowledge creation. Don't pass this Copyright Amendment Bill! Join "a Coalition for Effective Copyright in SA". Email copyright.coalition@yahoo.com