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Addressed to: Portfolio Committee on Trade and Industry, South African Parliament
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To Whom It May Concern

[Wikimedia ZA](#) is a non-profit membership driven organisation that represents [Wikipedia](#) editors in South Africa and acts as the official chapter within South Africa recognised by the Wikimedia Foundation that manages Wikipedia infrastructure. Wikipedia is a free online encyclopedia and the 5th largest website in the world.

Wikimedia ZA has two comments we would like to make on specific clauses in the current draft of the Copyright Amendment Bill, 2017.

Freedom of Panorama

See also: [Freedom of Panorama in South Africa](#)¹

Wikimedia ZA welcomes the changes to section 15 (1) (a) of the bill. Most specifically subsection ii which adds “*the artistic work so used, is situated in a public place.*” This addition will effectively act as a Freedom of Panorama clause in the bill thereby allowing members of the public to freely take photographs or other multimedia renderings of works located in public spaces, which is an already established cultural norm in South Africa of people photographing public artworks and sharing them over the internet.

It will also resolve [the dilemma posed](#)² in the initial draft, wherein we called to attention the issue of photographs of public artworks of anti-apartheid struggle icons being forbidden on websites such as Wikipedia due to ambiguous and restrictive copyright wording whilst colonial era monuments are allowed due to expired copyrights.

We support the inclusion of the following text on page 21 of the draft bill:

15. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

¹ Available at https://commons.wikimedia.org/wiki/Freedom_of_Panorama_ZA

² Available for download at https://commons.wikimedia.org/wiki/File:Wikimedia_Copyright_Submissions_to_amend_the_South_African_Copy_Right_Act_of_1978_-_16_September_2015.pdf

- “(1) (a) The copyright in an artistic work shall not be infringed by its [inclusion] use in [a cinematograph film or a television broadcast or transmission in a diffusion service] another work, if—
- (i) such [inclusion] use is merely by way of background, or incidental, to the principal matters represented in [the film, broadcast or transmission] that other work; or
 - (ii) the artistic work so used, is situated in a public place.

Fair Use

Wikimedia ZA supports the adoption of Fair Use in South Africa. This will both help protect freedom of speech and increase clarity on issues of copyright in South Africa. It will also future-proof fundamental aspects of copyright in South Africa so that it can better support technological development and innovation and it will help protect freedom of speech by reducing instances of self censorship by Wikipedia editors for fear of accidentally violating copyright. It will also harden us against acts of private censorship. The clarity contributes to a code that is easier for a layperson to understand and align our copyright law with more widely understood international norms.

Above all, it will position us favorably internationally on an increasingly competitive stage by better allowing for innovation by being more flexible and less restrictive on new, unanticipated and novel uses of technology for public benefit and advancement.

As such we support the replacement of Fair Dealing with the addition of the following section 12A (1) on Fair Use:

- 12A. (1) (a) In addition to uses specifically authorised, fair use in respect of a work or the performance of that work, for purposes such as the following, does not infringe copyright in that work:
- (i) Research, private study or personal use, including the use of a lawful copy of the work at a different time or with a different device;
 - (ii) criticism or review of that work or of another work;
 - (iii) reporting current events;
 - (iv) scholarship, teaching and education;
 - (v) comment, illustration, parody, satire, caricature, cartoon, tribute, homage or pastiche;
 - (vi) preservation of and access to the collections of libraries, archives and museums; and
 - (vii) ensuring proper performance of public administration.

Regards,

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