



Comments on Keyan Tomaselli's *The 2022 Copyright Amendment Bill: Implications for the South African universities' research economy*

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The tragedy of the deliberations on the Copyright Amendment Bill is the absence of critical and dispassionate engagement on the issues that are being raised by different interest groups. The interest groups have retreated to their laagers and are defending their positions, ferociously and without regard for other perspectives and interests. The clamour from the interest groups is mainly by way of loud slogans on anecdotal experiences, sometimes in sectors that are irrelevant to the discussion.

The absence of academic voices on the matter is unfortunate in two ways. One is the rigour and structure that they could have brought to the debate. The other is giving attention to the disregarded interests of academics as custodians of knowledge production, innovation and nurturing respect for own and others' work of the mind. The consequence of this lack of engagement is that legislators have had very little access to critical engagement and have tended to base their decisions on untested slogans. On the other hand, academics and universities have essentially allowed a process that has such a strong bearing on them to almost reach conclusion without their input.

Academics are both creators and users of copyright materials. They also develop and nurture future contributors to knowledge and creators of IP. All of them have members who are copyright holders and earn royalties and they certainly have many academics who aspire to write and become copyright holders. In many cases, universities claim and own the IP that their academic employees develop in the course of their employment. This means that many universities are owners of significant IP. Tomaselli's paper attempts to correct this by problematising the absence of the academic and college voice and dipping into the implications of the Bill to universities and their work. It highlights what is at stake for universities and articulates the role that they should have played and can still play. Although the paper is not an analysis of the Bill, it certainly sheds light on some of the concerns that rights holders have articulated. In addition to highlighting the neglected role of academics and the implications thereof, it manages to explain very technical issues without being lost in the legalese and jargon of a highly technical and esoteric subject. It therefore is an important tool in understanding the issues. In this regard it does not only identify the problem, but begins to analyse these implications.

One of the arguments put forward by the pro-user fraternity on the discourse, beyond exceptions for education, is the open access (OA) and Open Education Resources (OER) drive. The argument is often buoyed by the claim that universities are public funded institutions and as such their output should be free with reference to OA licenses. There is an implied view that copyright protection is an obstacle to OA and OER. An example where this works well is the Department of Basic Education's triple mix of own materials which are open to all their schools, OERs which the schools are also allowed to use and commercial material, which are under full copyright protection. This model has allowed all regimes to exist and thrive. The option for commercial

materials that are copyright protected and paid for – by teachers and learners who have access to free OA and OER – is a testimony to the role that properly developed and curated learning materials play in driving education outcomes and hints at what is likely to be lost, if indeed the Bill undermines the protection of copyright and just remuneration of rights holders.

This paper plays an important role in bringing the academic voice to the CAB discussions, and hopefully will create a balance between the views of producers and users of IP, something that has been missing so far. This, in turn, would give legislators a more diverse perspective on the process, a perspective from a community of both owners and users of copyright.