

South African copyright bill vs European Union copyright directive – poles apart

30 April 2019 3 min read

Much has been written of late about the South African Copyright Bill which has attracted a significant amount of criticism from various quarters as being opposed to the interests of creators of copyrighted works and also in respect of the poor technical drafting thereof.

The reason for having [intellectual property](#) legislation, including in respect of copyright, is to ensure that creators are properly protected in order to drive innovation and creativity. In the event that there is not sufficient protection for creators there would be no incentive to create.

Copyright legislation should provide a balance between creating monopolies for the benefit of such creators and the access to such works by the public in certain circumstances. Without strong copyright protection, creation of copyright works will be discouraged.

As we move into the world of artificial intelligence and increasing reliance on digital material which lends itself to the pervasiveness of user-uploads, the ability for creators to protect their rights becomes even more difficult than before.

A coalition of content creators from the publishing, music, film, animation, visual arts and other industries have joined together to oppose the Bill and have written an open letter to the President who is to sign the Bill into law as it has passed through the relevant sections of parliament. It is only President Ramaphosa that can stop the Bill from becoming law.

It is however interesting that at the same time as this issue is raging in South Africa, the European Union has passed the Directive on Copyright in the Digital Single Market which can be regarded as creator and author-friendly.

The EU Copyright Directive will bring the outdated copyright rules up to date by dealing with the posting of online content. The larger technology companies have opposed the legislation, especially Article 13, according to which any party providing content must obtain the consent from the owner or have attempted to obtain such consent. This means that platforms that host user-generated content, such as Youtube, Facebook, Instagram and Twitter, are now responsible for the material that is uploaded and which they host. For this to be done, such platforms will have to create effective content recognition technologies or filters which have the ability of checking that the content uploaded by users does not infringe rights of a third party.

This provision of the EU directive in particular has been criticized by various parties as sounding the death knell to the independence of the internet and will discourage creativity.

What is interesting in these processes is that despite them taking place at more or less the same time, the focus thereof in the different jurisdictions is decidedly different.

We all await to see what Mr Ramaphosa will do and whether he will heed the concerns of the coalition or whether he will sign the Bill into law.



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