



SOUTH AFRICAN CULTURAL OBSERVATORY

**Identification of potential measures to
protect South African content and
South African ownership of creative
material and platforms**

Submitted to:

Department of Arts and Culture

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South African Cultural Observatory Report

Identification of potential measures to protect South African content and South African ownership of creative material and platforms

September 2022

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Abbreviations

ACA2K	African Copyright and Access to Knowledge
ASSAf	Academy of Science of South Africa
CCIs	Cultural and Creative Industries
CIPC	Companies and Intellectual Property Commission
DAISY	Digitally Accessible Information System
DHET	Department of Higher Education and Training
DSAC	Department of Sports, Arts and Culture
DTI	Department of Trade and Industry
NFT	Non-fungible Token
NIPMO	National Intellectual Property Management Office
SACO	South African Cultural Observatory
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNESCO	United Nations Educational, Scientific and Cultural Organisation
USA	United States of America
WIPO	World Intellectual Property Organisation

Summary

Protecting creative content, material and platforms has become increasingly important, especially in the digital era where all forms of information and online products can be more easily accessed and shared as well as the increased commodification and commercialisation of creative work. This places creative producers, contributors and owners at greater risk of infringing the rights to their works. This is evident in relation to the number of creative industry intellectual property violations and piracy cases that required that greater attention be paid to protecting creative content/ work and enforcing ownership rights. A desktop study is used in this paper to examine key considerations, including what constitutes creative works, examining the legislative environment, copyright protections, fair use and fair dealing, and the influence of technological advancements, including digital protections, co-production and artificial intelligence-driven creativity.

Copyright protections range from not permitting the use of the content/ work without permission from the copyright owner (or procuring the work) to the unlicensed use of copyrighted works. Copyright is viewed as being a mechanism to encourage the production of creative works to foster creative expression while preventing the reproduction, adaptation or distribution of content without the copyright owner's authorisation. Thus, copyright is intended to reduce/ eliminate copyright infringement. In South Africa, copyright law protects literary works, artistic works, musical works, cinematograph films, sound recordings, broadcasts, programme-carrying signals, published editions and computer programmes. It is also important that copyright measures include economic and socio-ethical (moral/ human rights) considerations that have several implications for the Cultural and Creative Industries (CCIs) such as ensuring economic and other forms of reward/ incentives are accrued, protecting the rights and intellectual property of creative owners and contributors, raising awareness and enforcement, and understanding measures to ensure protection. Additionally, the diversity of creative domains and genres/ types must be considered. The prominence of copyright being a market-based incentive for creative production and protection is evident. Creative Commons delineate when and under what conditions rights provided by copyright could be relaxed, especially to support what is deemed to be for the public good. Fair use and fair dealing permit the use of content/ work for specific purposes such as news reporting, educational reasons and entertainment. This depends on country-specific legislative contexts and parameters that delineate the types of activities for which permission to use is granted or where exemptions apply.

A key debate in the literature is what constitutes creative content since the creative process and creativity are highly subjective. Additionally, artificial intelligence in co-authorship and co-ownership challenges traditional notions of creativity. Furthermore, the creativity requirement (embedded in terms such as 'originality', 'invention', 'innovation', 'talent', 'artistic skill' etc.) has increasingly become nebulous with mass generation of similar creative outputs.

In terms of the policy and legislative context in South Africa, the Copyright Act No. 98 of 1978 remains the main law and attempts to amend this Act have remained unsuccessful, despite consensus that it is outdated and inadequate, especially in relation to considering digital advancements and royalty payments. This is primarily because the Copyright Amendment Bill has been challenged on numerous grounds, including violating the rights of persons with disabilities, not sufficiently addressing the digital environment, provisions for the reproduction

of books and copyright automatically transferring to the State when an owner cannot be located or dies. The paper also identifies other pieces of legislation such as the Cinematographic Films Act No. 62 of 1977, the Trade Marks Act No. 194 of 1993 and the Performers' Protection Act No. 11 of 1967 that impact on the protection of creative content and works. Additionally, South Africa is a signatory to two major international copyright conventions: the World Intellectual Property Organisation (WIPO) Berne Convention for the Protection of Literary and Artistic Works (1971) and signatory to the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994). Additionally, South Africa is committed to support (but has not ratified) international treaties such as the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and Marrakesh Treaty to support persons who are blind, visually impaired or otherwise print disabled to access published works. The need to examine historical legacy expropriation of cultural and creative work that remains unresolved is also noted.

The main measures to protect creative content, material and platforms are copyright and fair use and dealing that permits the unlicensed use of copyrighted works under specific conditions that could include educational purposes, research, judicial proceedings, news reporting, parody/ entertainment, etc. The ability to monitor fair use and fair dealing as well as having the capabilities to address violations, misuse and exploitation of fair use and fair dealing are of concern. Creative Content licensing, as noted earlier, is a measure that promotes open access. Four conditions need to be met: attribution, non-commercial, share-alike and no derivatives. Creative Commons also provide for zero licensing when creators can waive all their rights. Technological protection measures (such as encryption and the use of various digital locks, digital image authentication/ digital watermarking and blockchain-enabled cryptographic assets) are applied to copyright works in digital form to protect content and detect infringements. Noteworthy is that there are increased trends among newer genres of creative activities (such as video game production) to embrace open intellectual property business models that are profitable.

The need to balance copyright protection and enable access for mainly educational and public good purposes emerges as a key consideration. In this context, recommendations are forwarded, including revising/ amending and updating legislation. Relevant and comprehensive legislative frameworks need to be instituted to protect creative content and other forms of copyright in South Africa. Additionally, mechanisms and the necessary systems and infrastructure (including appropriate databases and repositories) need to be in place to facilitate the registration of copyright works that are sensitive and supportive of the diversity of domains/ genres in the CCIs and the different types of creative producers. It is also recommended that audience consumption and preferences be monitored, and lessons from the economic valuation of ecosystem services be adapted for the CCIs. Furthermore, it is suggested that a dedicated legal aid team be established in South Africa for the CCIs to ensure protection and enforcement. Considering the application of patent right requirements in relation to certain types of creative content, material and platforms is also advocated. The Department of Higher Education and Training's (DHET, 2017) Creative Outputs and Innovations Policy for Public Higher Education Institutions could also be broadened for the CCIs more generally. Finally, it is suggested that government should ensure that there is a mechanism to remunerate/ compensate creative content producers and owners for losses incurred when content becomes accessible (without compensation) for fair use and fair dealing purposes.

1. Introduction

Protecting creative content, material and platforms (especially in the online and digital era) poses several challenges and risks for creative producers, contributors and product owners (Aniek, 2020; Cunningham and Swift, 2019; Kim, 2007; Pistorius and Mwim, 2019). These include access to information as well as enforcing copyright that provides for intellectual property protections. Aniek (2020) specifically states that the many creative industry intellectual property violations and piracy cases are evidence of the need for a greater focus on protecting creative content/ work and enforcing ownership rights. An important aspect is copyright protections that outline who can use creative content/ information and works/ materials (partially or totally). Copyright protections can range from not permitting the use of the content/ work without permission from the copyright owner (or procuring the work) to the unlicensed use of copyrighted works covered under the fair use doctrine, which permits use for specific purposes such as news reporting, educational reasons and entertainment. Fair use and fair dealing depend on country-specific legislative contexts and parameters that delineate the types of activities for which permission to use is granted or where exemptions apply and the nature and extent of benefit/s to the owner of the creative content/ work and the users (D'Agostino, 2008; Katz, 2013).

There are various aspects to consider when protecting content and the ownership of creative materials and platforms, which include:

- The relationships between the protection of creative content/ work and economic benefits
- Copyright restrictions (and whether these are adequately stated)
- Specification of purpose delineating how, when and why the content/ work can be used

There has been research and reports on protecting creative content and the ownership of creative materials and platforms. For example, Kim (2007) examines conflicts between copyright holders to protect their ownership and those advocating for public access and the use of copyrighted works, especially in the era of digital technology. Growe and Mager (2018) indicate that the complexity of work in the creative industries (from physical environments where work is undertaken to the logistics of team-orientation) is important to consider when addressing issues pertaining to protection. Rosati (2019) indicates emerging trends in artificial intelligence-driven creativity, which has implications for the CCIs. This is supported by Vasconcellos-Grubow (2018) who notes the increasing prominence of artificial intelligence in creative co-production, especially in the music domain.

Aniek (2020) proposes a model of legal protection of creative economics in obtaining intellectual property (arguing that intellectual creativity should have economic as well as moral and ethical rewards/ incentives) that has lessons for South Africa. Bartholomew (2021) problematises issues in relation to copyright and the creative process, including what constitutes creative works. Linked to this is the commodification and commercialisation of creative work. These studies and guidelines are useful for understanding the various aspects that need to be considered and are also the basis to draw on best practices for consideration in the South African context, where there is limited research. In South Africa, creative content

is protected by legislation but there are major difficulties in relation to enforcement and there is contestation with regard to current laws. Thus, there is a need to focus on measures to protect creative content and the ownership of creative materials and platforms.

In the context of the above discussion, the overall goals of this paper are to:

1. Critically examine current scholarly literature and reports on the protection of creative content and the ownership of creative materials and platforms, including the definitions and scope of key terms/ concepts.
2. Provide a brief overview of the legislative context in relation to the protection of creative content and the ownership of creative materials and platforms in South Africa and the implications thereof.
3. Examine the measures used to protect creative content and the ownership of creative materials and platforms generally and in the South African context specifically.
4. Forward recommendations, including noting legislative and policy issues as well as areas for research and training, on how to implement or improve the implementation of measures to protect creative content and the ownership of creative materials and platforms in South Africa.

In terms of the methodological approach, a desktop study is used to examine policy documents, research reports and academic sources.

2. Protection of creative content: Key terms and prominent debates

There are key terms and debates (including what constitutes the protection of creative content and the ownership of creative materials and platforms, as well as measures commonly referred to such as copyright, Creative Commons licensing, fair use and fair dealing, digital image watermarking, etc.) that frame the discussion. The key terms are defined prior to looking at prominent debates and thematic aspects in the literature. The protection of creative content and the ownership of creative materials and platforms are interrelated concepts. The cultural domains (audio-visual and interactive media, books and press, cultural and natural heritage, design and creative services, performance and celebration, and visual arts and crafts) identified by the the United Nations Educational, Scientific and Cultural Organisation (UNESCO, 2009) denote the diversity in the CCIs. Similarly, Erickson (2018: 700) indicates that the creative industries generally include “the activities of advertising and marketing, architecture, crafts, design, film, television, video, radio, photography, software, publishing, museums, music, and the performing arts”. These activities are also viewed as copyright industries, denoting the perceived importance of copyright protection for their sustainability (Erickson, 2018). Balganesh (2020: 3) states that copyright is by nature a market-based incentive for creative production: “by promising authors a set of marketable exclusive rights in their works, copyright is believed to incentivise the production of works of authorship”.

Key terms

Some of the key terms and measures commonly referred to in respect of protecting creative content and enabling the ownership of creative materials and platforms are copyright, Creative Commons, and fair use and fair dealing. Bartholomew (2021) and Kretschmer and Margoni (2018) state that **copyright** is the mechanism for encouraging the production of creative

works, aimed at fostering creative expression. Kamaar and Diedericks (2021) state that copyright subsists in a work that is original (does not necessarily need to be novel, unique or inventive) and exists in a material form that is generated by a 'qualified person'. Erickson (2018) notes that copyright applies automatically to a creative work (residing with the person who first created the work) once it is made in a fixed form, thus no registration is required, which is the case in relation to patents and trademarks. Miszczyński (2021) asserts that classic copyright law has traditionally been used to prevent the reproduction, adaptation or distribution of content without the copyright owner's authorisation. Blignaut (2021), Kamaar and Diedericks (2021), Netshakhuma (2021) and the Republic of South Africa (1978) further identify the categories or types of works protected by copyright law in South Africa as literary works (which include databases since a literary work contains tables and compilations of data stored or embodied in a computer), artistic works, musical works, cinematograph films, sound recordings, broadcasts, programme-carrying signals, published editions and computer programmes. Thus, the implications of copyright legislation in the CCIs are widespread. Of concern, however, is that the list of copyrightable works is exhaustive and, therefore, if a work does not fit into one of the types of recognised works, it is not protected by copyright law (Blignaut, 2021). For the CCIs, it is also important to consider moral rights as being ancillary rights to copyright. Blignaut (2021) indicates that Copyright Act No. 98 of 1978 includes two aspects of authors' moral rights:

- The right of paternity: the right to claim authorship of the work.
- The right of integrity: the right to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author.

Kamaar and Diedericks (2021) indicate that copyright infringement entails a work being copied without the authorisation of the copyright owner (that is, without consent), with the following constituting acts of copyright infringement (as stated in the Copyright Act No. 98 of 1978 - Republic of South Africa, 1978):

- Reproducing the work in a manner or form
- Publishing the copyright work if it was hitherto unpublished
- Performing a work in public
- Broadcasting a work
- Transmission in a diffusion service
- Adaptation
- Performs acts in relation to adaptations
- Causing a film to be seen or heard in public
- Film, sound recording and computer rentals
- Making a record embodying a sound recording
- Communicating a sound recording to the public
- Rebroadcasting a broadcast
- Distributing programme-carrying signals to the public

Apfelbaum and Stadler (2021) state that **Creative Commons** provides creators with a means of communicating to users when and under what conditions the exclusive rights provided by copyright could be relaxed that does not require users to request permission and without requiring creators to waive copyright. Miszczyński (2021) states that the last decade has seen

a trend to open up copyright and enable the freer exchange of cultural products. Miszczyński (2021) further asserts that Creative Commons challenges the restrictiveness and extensive control of the intellectual property regime as well as responds to the reorganisation of the ways in which cultural production occurs.

Band and Gerafi (2015) state that **fair use and fair dealing** provisions in copyright laws are based on the notion that there is no basis for preventing the more widespread adoption of these doctrines, with the benefits their flexibility brings to authors, publishers, consumers, technology companies, libraries, museums, educational institutions, and governments. Fair use and fair dealing delimit who and how created content, platforms, information and works can be used from complete restrictions requiring permission to use or purchasing use rights to having access mainly deemed to be for purposes that promote education and the public good. Bhusari (2022) asserts that the doctrine of fair use and fair dealing allows the public to use the copyrighted work for limited purposes as specified without seeking the permission of the copyright owner.

Key debates

There are several prominent debates in the literature related to the CCIs. The first is in relation to **what constitutes creative content**. Bartholomew (2021) and Fromer (2010) emphasise that the creative process and creativity generally are embedded in subjectivity (discussed later). It is also important to note that the increasing commodification and commercialisation of creative outputs implies that there is an economic valuation of creativity that increases the importance of protecting creative content and outputs. As noted earlier, Vasconcellos-Grubow (2018) also illustrate the increasing role of artificial intelligence in creative production, arguing that the current reluctance for laws to consider artificial intelligence in co-authorship and co-ownership will need to be revisited. Bartholomew (2021) further notes that creative works are the product of creative processes and not only the product itself. Additionally, the creativity requirement (previously associated with 'originality', 'invention', 'innovation', 'talent', 'artistic skill' etc.) has increasingly become nebulous with mass generation of similar creative outputs, especially in the music and audio-visual domains. Kamaar and Diedericks (2021: 1) further state that in relation to originality:

... a work need not be novel, nor does it have to be unique or inventive. However, such work must be a product of the maker's own endeavours and labour. Furthermore, a work should not be copied from other sources, however, it can still be original irrespective of it having been copied from a previous, provided sufficient skill and effort have been embodied in the creation of the consequent work. As a result of novelty not being a requirement, the test for originality is a subjective one and is dependent on how an author went about creating a work. The standard for originality is low.

In some CCIs domains (such as literary works), protecting copyright is much easier since copyright infringement such as plagiarism is easier to detect.

Measures to protect creative outputs tend to focus on products (which are easier to identify) and not the process that can be lengthy and intangible to measure. Another aspect of creative content that is problematic is that it is often associated with contributing to the 'public good' (Bartholomew, 2021). This notion often makes creative content to be more susceptible to

exploitation. Additionally, most creative content generators do not have the resources or know-how to protect and exercise their rights.

Policy and legislative context in South Africa

Nicholson (2022) states that copyright law in South Africa was modelled on British copyright law but updated and enacted by the apartheid regime in 1978, arguing that the Copyright Act No. 98 of 1978 is outdated and inadequate, especially in the digital environment. Specifically, Nicholson (2022) argues that without amendments to the Copyright Act, South Africa will find it difficult to engage and compete in the digital space, especially as online teaching and learning as well as consumption increases in the context of the 4th industrial revolution. Chalmers et al. (2022) specifically state that digital objects such as imagery and music can increasingly be copied and shared at zero marginal cost, and that capturing value from digital creations has become difficult. Sklyarevskiy (2020) focuses on multi-sided music platforms, which are online hosting services (such as YouTube, Facebook, Sound-Cloud and Spotify) that permit users to upload music and other content or uploads the music and content itself. Sklyarevskiy (2020) illustrates the need for African laws (focusing on platforms in South Africa and Nigeria) to regulate these platforms, which are currently non-existent or yet to be enacted. Marciszewski (2020) focuses on the application of copyright law to popular media made by small-scale creators and shared on the internet (known as memes), especially in the context of increased monetisation of memes which requires greater protection for meme creators. Additionally, Pistorius and Mwim (2019) assert that works in digital form have uniform characteristics that create the conditions for these works to be copied, distributed and stored with ease.

Nicholson (2022) asserts that the Copyright Act No. 98 of 1978 has no provisions for libraries and archives, galleries and museums, people with disabilities, or any digital uses; also noting that the Act is arguably in conflict with the South African Constitution and obligations in terms of various international human rights conventions, including the Convention and Protocol of the United Nations Convention on the Rights of Persons with Disabilities ratified in 2007 by South Africa. Kamaar and Diedericks (2021) assert that South African legislation (specifically Copyright Act No. 98 of 1978) does not provide for the registration of copyright works nor makes provision for the exclusion of any works. They assert that the Cinematographic Films Act No. 62 of 1977 provides a voluntary system to register cinematographic films for a nominal fee of R510 but that there are no detrimental consequences if the cinematographic work is not registered because these are protected under Copyright Act No. 98 of 1978. The duration of copyright in terms of the Act is generally 50 years following the death of the author but may differ depending on the category of work and whether the work is owned by a corporate entity (in this instance, the work can subsist in perpetuity depending on the lifespan of the business) (Blignaut, 2021; Kamaar and Diedericks, 2021):

- Literary, musical and artistic works (except photographs) shall stand for 50 years after the death of an author, unless such a work (or if adapted) has been published, performed in public, an offer for sale to the public of records has occurred or such work has been broadcast, then copyright subsists for a period of 50 years from the end of the year in which any of these actions had occurred. If the author is anonymous/ acting under a pseudonym, copyright subsists for 50 years from the end of the year in which the work is made available to the public with the consent of the owner.

- In relation to computer programmes, photographs and cinematographic films, copyright subsists for 50 years after the work was initially published or 50 years after the work is made available to the public (with the consent of the copyright owner).
- In terms of sound recordings and published editions, copyright subsists for 50 years from the date of publication; while for broadcasts and programme-carrying signals, copyright subsists for 50 years from the broadcasts/ programme-carrying signals being made.
- Where there is joint authorship, the terms of copyright is determined by the longest surviving author.

The above denotes that the Copyright Act No. 98 of 1978 does attempt to consider diversity in relation to the different types of creative works and content. However, the world has changed considerably, especially in relation to technological advancements and digitisation, which impacts on who and how creative works and content are produced and accessed. Furthermore, the period of protection may need to be revised. Additionally, as Kamaar and Diedericks (2021) state, there are exceptions to the main author of a work being the first owner of the copyright, which includes works being produced when employed to produce such work (for example, employed by a newspaper or magazine), commissioned work (such as a painting or a portrait) when there is an agreement is to pay for such works (person/s paying for the works are the owner), and works created by an author under the direction or control of the State or prescribed international organisations belongs to the entity. It is important to note that for commissioned works, the transfer of copyright does not occur automatically and individuals/ businesses need to arrange for the transfer of the copyright ownership.

While the Copyright Act No. 98 of 1978 is the main legislature for the protection of creative content and works in South Africa, in addition to the Cinematographic Films Act No. 62 of 1977 referred to above, other pertinent pieces of legislation that could have an impact are (Blignaut, 2021; Kamaar and Diedericks, 2021; Nicholson, 2022):

- Intellectual Property laws: can offer dual protection and requires registration
- Trade Marks Act No. 194 of 1993: provides design right protection and also requires registration.
- Performers' Protection Act No. 11 of 1967: grants protection to any person who gives a rendition of literary, musical, dramatic, dramatic-musical and artistic works.
- Registration of Copyright in Cinematograph Films Act No 62 of 1977: the Act does ensure copyright but enables the subsistence of copyright in a film as well as the rights under copyright in that film vesting to be easily and efficiently proved for the purposes of court proceedings.
- Counterfeit Goods Act No. 37 of 1997: offers numerous enforcement measures (including providing for the search, seizure, detention, and destruction of infringing goods as well s interdicts, damages and royalties) and enables the owners of Intellectual Property Rights to take action against counterfeiting activities as well as primary and secondary infringers (on criminal and/ or civil basis).
- Companies Act, 2008 Act No. 71 of 2008: establishes the Companies and Intellectual Property Commission (CIPC) as an agency of the State (specifically the Department of Trade and Industry - DTI) responsible for, among other responsibilities, the registration and maintenance of companies, co-operatives and Intellectual Property Rights (copyright, designs, trademarks and patents).

- Protection, Promotion, Development and Management of Indigenous Knowledge Systems Act 6 of 2019: deals with indigenous knowledge issues and to protect the rights of indigenous knowledge communities. This Act is important for the CCIs since many cultural and creative processes, content and products are often linked to indigenous knowledge and practices.

These pieces of legislation need to be reviewed and updated, as well as aligned. For example, the Copyright Review Commission established by the DTI undertook a review more than a decade ago (DTI, 2011) of the collecting societies established in South Africa that have mandates to license musical and literary works, sound recordings and published editions to prospective users, and to collect on behalf of the rights owners the royalties payable by the users. The Commission noted with concern that nine years after collecting societies were set up, not a cent was paid in royalties to musicians and record companies. Furthermore, the Commission concluded that South African copyright and performers' protection legislations are outdated and do not provide for all forms of digital exploitation (DTI, 2011). Additionally, the Commission recommended that (DTI, 2011: 38):

South Africa should amend its Copyright Act by adopting provisions suitable for the digital environment *inter alia* the right to communicate literary and musical works to the public and the right to make available copies of sound recordings. This should be done regardless of whether South Africa decides to ratify the Internet treaties.

Additionally, enforcement measures and mechanisms to deal with non-compliance are critical to protect creative content.

Blignaut (2021) and Netshakhuma (2021) state that South Africa is a signatory to two major international copyright conventions: the World Intellectual Property Organisation (WIPO) Berne Convention for the Protection of Literary and Artistic Works (1971) and signatory to the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994). Kamaar and Diedericks (2021) and Nicholson (2022) further note that South Africa has indicated a commitment to (but has not ratified) international treaties such as the WIPO Copyright Treaty, which is an international treaty adopted in 1996 by the WIPO member to provide additional protections for copyright in respect of advances in information technology. Relatedly, the WIPO Performances and Phonograms Treaty focuses on the effective and uniform protection of the rights of performers and producers of phonograms (Pistorius and Mwim, 2019). Kamaar and Diedericks (2021) and Nicholson (2022) also make reference to the Marrakesh Treaty to support persons who are blind, visually impaired or otherwise print disabled to access published works.

The Academy of Science of South Africa (ASSAf, 2021) and Pistorius and Mwim (2019) provide a genesis of the Copyright Amendment Bill which was introduced in 2009 by the DTI and published as a Draft Copyright Amendment Bill for public comment in July 2015. ASSAf (2021) and Nicholson (2022) indicate that the final 2017 version of the Bill (Minister of Trade and Industry, 2017) was approved by Parliament in 2019 but President Cyril Ramaphosa did not assent to and sign the Bill in terms of Section 79(1) of the Constitution, referring it back to Parliament for review on 16 June 2020, on constitutionality issues.

A key constitutionality consideration raised by *Blind South Africa*, according to BusinessTech (2022: 1), is that the Copyright Amendment Bill “violated the rights of persons who are blind or visually impaired – in particular their rights to equality, dignity, basic and further education, freedom of expression, language and participation in the cultural life of one’s choice”, with fewer than 0.5% of published works in South Africa being made available in accessible formats like braille. Nicholson (2022) also notes that copyright legislation in South Africa makes no provision for people with disabilities and, in the context of its age (legislated in 1978), does not address the digital environment. BusinessTech (2022) asserts that parties are severely barred or severely limited from adapting works for easier consumption by those who suffer from print or visual impairments, which creates barriers to their constitutional rights. BusinessTech (2022) further notes that the Media Monitoring Africa Trust argues that works need to be adapted to more accessible formats for persons with disabilities, such as digital formats that enable the use of screen readers and adding audio descriptors and subtitles to broadcast media and films, but adapting copyrightable works may amount to copyright infringement which may constitute an offence. To accommodate these concerns, the High Court in 2021 proposed that exceptions to accessible formats like braille, large print, and the Digitally Accessible Information System (DAISY) be allowed, without the permission or authorisation of the copyright owner (BusinessTech, 2022). These issues are currently being engaged with.

South Africa’s Copyright Amendment Bill has generated substantial debates in the country. The supporters, according to Nicholson (2018), are mainly from educational institutions, libraries and archives, and non-government and local organisations while there is ‘fierce opposition’ by the owners of works. Nicholson (2022: 320) further asserts: “rights owners strive for more protection and control of their works, whilst users of information endeavour to exercise the access to information rights afforded to them by constitutional and other national legislation”. Nicholson (2022) further argues that to advance public interest (linked to fair use and fair dealing), there is often tension between those who control copyright of the works and those who want to use the works for research, educational, recreational and other purposes. Kamaar and Diedericks (2021) identify other contentious aspects of the Copyright Amendment Bill, which include that copyright will automatically transfer to the State if the owner is unknown, cannot be located or is deceased. They also state that the Copyright Amendment Bill will have a substantial impact on start-up companies and new ventures. This will impact on the CCIs, where a significant proportion of creative content is produced by new ventures and/ or start-up companies. Pistorius and Mwim (2019) also highlight the controversial proposal in the Copyright Amendment Bill that makes provision for the reproduction of whole textbooks where the textbook is not for sale in South Africa or cannot be obtained at a price reasonably related to that normally charged in South Africa for comparable works (although it is unclear how the price for comparable works should be determined) and that educational institutions make copies of copyright works for educational purposes. Pistorius and Mwim (2019) note that in international copyright law, such as in the United States of America (USA), these practices are viewed as copyright infringements.

Armstrong et al. (2010) indicate that the African Copyright and Access to Knowledge (ACA2K) project examined the relationship between national copyright environments and access to learning materials in eight African countries, including South Africa. They found that the stricter the law, the more people tend to infringe copyright to ensure information access, although unlawful. They concluded that copyright laws by themselves are unreliable access-enablers, even though copyright law is intended to balance the economic interests of rights-holders with

the access rights of users. They further assert that the ACA2K project reveals that appropriate and adequate copyright flexibilities are critical to enable access, which is important for human and social development. Similarly, Pistorius and Mwim (2019) argue that there is need achieve a balance between promoting access to works (to enable knowledge sharing and learning) and the protection of the interests of copyright holders.

It is also important to examine historical legacy expropriation of cultural and creative work that remains unresolved. As Lester (2020) illustrates in the African-American context (and this is applicable to people on the African continent and globally who have been subjected to colonialism, enslavement and other forms of discriminatory practices), the ownership of African-American/ black creative work by those who are the descendants of slaves in the USA should be considered a human right under copyright law. This is applicable In South Africa as well given its colonial and apartheid history. Lester (2020) argues that particular focus should be on how creative works have been taken, appropriated and rebranded for profit without the permission of their original creators.

3. Measures to protect creative content and the ownership of creative materials and platforms

Measures to protect creative content and the ownership of creative materials and platforms (drawing on international experiences and focusing specifically on implications for South Africa) are discussed in this section. **Fair use and fair dealing** in relation to the CCIs relate to copyright protections of original creative works. Copyright protections delineate who and how created information and works (in total or partially) can be used on a spectrum from not permitting the use of the work without prior permission from the copyright owner (or purchasing the work) to the fair use doctrine which permits the unlicensed use of copyrighted works under specific conditions that could include for educational purposes, news reporting, parody/entertainment, etc. Fair use is used in the USA, while other countries have a similar exception referred to fair dealing that permits copyrighted works to be used without obtaining a license (Liu, 2019). Pouris and Inglesi-Lotz (2011) (DTI commissioned study) state that South Africa does not have exceptions and limitations for groups with disabilities, and for technological protection, measures (such as encryption of the protected material) and electronic rights to manage information (such as digital identifiers). In South Africa, Blignaut (2021) and Kamaar and Diedericks (2021) note that the copyright will not be infringed in situations or contexts where the work is used for the purposes of research, education, private use, criticism, review, reporting of current events, judicial proceedings, quotations, illustrations, and reproduction and archiving by broadcasters. Thus, the Copyright Act No. 98 of 1978 makes provisions for fair dealing and requires that fair dealing in terms of criticism or reporting current events must be accompanied by an appropriate acknowledgement that mentions the source of the work as well as the name of the author).

D'Agostino (2008) notes that fair use and fair dealing are related concepts but are not the same. Key issues that emerge in the literature pertain to legislative context and parameters of specific countries, types of activities that are exempted or permission to use is granted, extent and nature of benefit/s user/s accrue, etc. (D'Agostino, 2008; Gervais, 2009; Katz, 2013; Liu,

2019). The ability to monitor fair use and fair dealing as well as having the capabilities to address violations, misuse and exploitation of fair use and fair dealing are also of concern.

As indicated earlier, what constitutes creativity in relation to copyright is problematic, especially in the context of the creativity requirement and encouraging 'creativity' for the public good and as public expression compared to the higher value and requirements accorded to 'scientific' discovery/ generation. This is very different for patent law, which Goldstein (2008) argues has stricter eligibility requirements. Fromer (2010) supports the subjective component of creativity in relation to intellectual property, arguing that the consumption of creativity is personal and, therefore, subjective. Similarly, Bartholomew (2021: 359) states, "the creative process is wholly and necessarily subjective, impervious to description or measurement by objective criteria". While science and engineering are orientated towards 'problem solving', Fromer (2010) states that creativity encourages 'problem finding' and divergent thinking and responses among audiences. Fromer (2010) further notes that 'newness' is not a requirement in relation to creativity, especially if the focus is on audience preferences. Fromer (2010) argues that the creativity requirement should include and be aligned with audience/ market responses. This, however, is not easy to measure or track. Additionally, as Bartholomew (2021) cautions, audience preferences are not necessarily the best indicator of creativity and that audiences are often substantially influenced by marketing, cost, peer pressure, etc. It is also important to note that audiences also do not discern when creative content has copyright infringement.

There is increasing recognition the copyright protection applies to all types of creative content and artistic content/ expression, irrespective if they were generated accidentally and not intentionally (Bartholomew, 2021). Furthermore, Renner and Scholar (2016: 1) state that "copyright protection is about defending and not stifling an author's creativity". This balance, as noted earlier, is important to achieve.

From a rights-based perspective all creative content and outputs should be protected. However, given the diversity in the CCIs, those industries and genres that have higher commercial/ economic value tend to be most affected by measures to protect creative content and outputs. Thus, some forms of creativity or domains in the CCIs require higher levels of protection and there may be a bias in protecting sectors deemed to be economically more valuable (where commodification is prominent) while others, including indigenous cultural, artistic and creative expressions, may be neglected.

Creative Commons licensing (especially in the domain of book publishing and videos) is a measure that promotes open access, as indicated by Apfelbaum and Stadler (2021), to enable users under specific conditions to use creative content and waive copyright. Miszczyński (2021) states that the popularisation of Creative Commons requires transformation within three key and intersecting areas of production: the subjects of property (creators), objects of property (creations) and articulation of usage (source information). Apfelbaum and Stadler (2021: 122-123 citing Creative Commons, 2020) note the four conditions that need to be met for Creative Commons licensing:

- Attribution: requires that credit be given to the original work and creator.
- Non-commercial: requires that permission for use of the work is granted so long as the use itself is not-for-profit in nature.

- Share-alike: extends permission to modify a work so long as works that have been adapted are subsequently licensed under a compatible Creative Commons license. This condition prevents a modified version of a work from being re-released under a license that is more or less restrictive than the original license and/ or a license that does not permit subsequent adaptation.
- No derivatives: communicates to consumers that permission is granted provided the material is to be shared in its original form; that is, modified versions of the material may not be distributed without the permission of the copyright holder.

Apfelbaum and Stadler (2021) state that Creative Commons also provide for zero licensing which is an option for creators to waive all their rights, which permits users to copy, distribute, and adapt work for commercial and/ or non-commercial purposes without an attribution to the original work. Creative Commons licensing is closely linked to fair use and fair dealing, and provides a mechanism to share creative content and platforms in a manner that does not violate the rights of creative content producers. It also is an approach to keep track of when Creative Commons licensing is used and to ensure that it is not abused. There is a need to have a database of Creative Commons licenses, which to some extent is already accessible on the internet but South Africa should develop a formal repository. Processes also need to be put in place to support Creative Commons licensing. Miszczyński (2021) argues that traditional copyright practices rely on dominant industry actors (including major record labels and collecting societies) that tend to concentrate power and control in the industry. Miszczyński (2021) notes that although digitisation has resulted in substantial changes, creators' entitlements such as wages, social benefits or job security are limited, and they are often dispossessed of ownership and control over their own work. Miszczyński (2021) believes that Creative Commons offers an alternative path that is not dependent on traditional institutions of copyright.

Pistorius and Mwim (2019) state that the **evolution in digital technologies and technological advancements** more generally have had an enormous impact on traditional copyright notions, as noted earlier. They further state that technological protection measures are applied to copyright works in digital form to curb infringement. This is particularly in a global context where, as indicated by Renner and Scholar (2016), there has never been such widespread and immediate access to such a broad range of creative works by individuals to large corporations that can reach global audiences effortlessly and inexpensively. They further indicate that technology permits people to create, transform and/ or distribute content and materials.

While the digital world poses threats to creative content protection, making it easier to access and share content, technological advancements are also being used to protect content and detect infringements. Nicholson (2022) states that encryption and the use of various digital locks effectively protect copyright owners against the piracy of their digital works. Pistorius (2006) cautions that technological protection measures, which have the potential to lock up information indefinitely, result in content owners gaining increased rights to control both access to and use of copyright works in digital form through technological means. This limits fair use and fair dealing access to creative content. This concern is also raised by Nicholson (2022) who notes that technology often does not distinguish between fair use for the purpose of research or private study and unfair use for commercial gain since encryption and digital locks generally restrict/ bar all forms of unauthorised uses. Similarly, Pistorius and

Mwim (2019) warn that technological protection measures may impede data literacy, access to works, and teaching and learning, particularly in developing communities. They indicate that recent attempts to revise copyright law in South Africa (discussed earlier) have been contested because it has failed to attain a balanced approach.

Begum and Uddin (2020) state that digital image authentication is an extremely significant concern for the digital revolution since it is easy to tamper with any image. Wadhera et al. (2022) indicate that the internet has led to digital data such as images, audio and video content being easily accessible, which has given rise to various issues including content authentication, security, copyright protection, and ownership identification. Likewise, Begum and Uddin (2020) assert that image processing and the internet have made it easier to distribute, duplicate, reproduce and modify digital images at low cost and with approximately immediate delivery without compromising quality. Wadhera et al. (2022) show how digital image watermarking is a method to provide security and authentication to digital content that prevents any form of tampering or alteration. Digital watermarking entails the insertion of signal information into the original media content, which can be uncovered and extracted to report the actual owner of the digital media (Begum and Uddin, 2020; Wadhera et al., 2022). Wadhera et al. (2022) assert that the applications of watermarking techniques include tracing illegal users (so that the owner can approach the regulatory authorities), ensuring that data pertaining to people who buy and sell digital media are tracked and recorded, and copyright breaches can be picked up. Begum and Uddin (2020) reveal that digital watermarking of an image provides an alternative solution for ensuring tamper-resistance, the ownership of intellectual property, and reinforcing the security of multimedia documents.

Chalmers et al. (2022) illustrate how blockchain-enabled cryptographic assets (such as Non-fungible Tokens - NFTs) can be used to represent proof-of-ownership for digital objects such as art, songs, newspaper articles and viral video clips for creative industry entrepreneurs that include both the creators (such as artists, musicians, designers and photographers) and ventures that support the production and distribution of creative goods (such as publishers, art galleries, production companies and recording labels). They indicate that NFTs are encoded on to a blockchain which provides a digital certificate of ownership for a specific asset that can be sold or exchanged like other cryptocurrencies (such as Bitcoin). Unlike bitcoins, however, which are fungible assets (one bitcoin is equivalent to any other bitcoin), the perceived value of NFTs (which are non-fungible) depends on their individual characteristics and, thus, the value of each NFT differs (Chalmers et al., 2022). They further assert that NFTs have been forged by creative industry entrepreneurs to generate new revenue streams and ways to engage with stakeholders. Notable media stories of the sale of digital art and music indicate the increasing popularity of NFTs in the CCIs. However, Chalmers et al. (2022) caution that despite the rapid growth in popularity of NFTs, there are concerns about the legal ownership of these assets, as well as speculation and fraud trepidation. Chalmers et al. (2022) identify potentially valuable artistic and financial opportunities associated with NFTs for creative industry entrepreneurs, but warn that NFTs should be approached with care. Chalmers et al. (2021) indicate, for example, that even when digital goods have been monetised effectively (for example, individual songs), the structural conditions of digital creative industries can often limit value capture by creators in favour of funnelling revenues to more powerful stakeholders such as the intermediary agents or platforms. Chalmers et al. (2022) also note regulatory challenges in relation to NFTs, which include providing legal clarity

on what property rights are actually conferred by an NFT, deterring fraud in the sphere, and preserving the underlying novel mechanism for funding creative endeavours.

Changes in innovations are ushering new trends in the manner in which copyright and forms of protection in relation to content and materials are understood and valued. Erickson (2018), for example, shows how some types of creative firms thrive without copyright which challenges the general consensus that strong intellectual property rights support creative firms and are best placed to protect creative content, materials and platforms. Erickson (2018) shows how some newer genres of creative activities (such as video game production and 3-D printing) are embracing open intellectual property business models that are profitable. Erickson (2018) specifically examines the relationship between intellectual protection and value capture for creative industry firms engaged in collective or open innovation activities. The key findings pertinent to the CCIs were that certain creative industries opt for collective/ open innovation or public domain works to reduce costs (especially to develop, test and refine/ improve products) and increase accessibility/ consumption, and involve audience members to improve products and be market responsive in the future. Erickson (2018) concludes by noting the importance of mechanisms to understand and articulate the value of openness for creative industries policy and management of creative organisations. Amendments to the Copyright Act in South Africa should address these aspects as well.

The legislative context has advanced considerably to protect the CCIs, at least in intent. However, ensuring compliance and implementation pose challenges. In terms of the CCIs, where the inspiration for creative content/ works often draws from lived experiences and other works, it is also important to be aware of the possible forms of defences that are available to businesses/ organisations/ artists/ performers/ programmers/ creative content generators in the Copyright Act to protect their work and defend themselves when the works of others are used. These include (Blignaut, 2021):

- Fair dealing
- Judicial proceedings
- Quotations
- Illustrations for teaching
- Ephemeral copies
- Literary works delivered in public
- Reproductions in press or broadcast
- Official texts, political speeches, and news of the day
- Mechanical rights in musical works
- Background or incidental material
- Reconstruction of buildings
- Artistic works in public places
- Excerpts from programme-carrying signals
- Reproduction permitted by regulations
- Licences granted by the Copyright Tribunal
- Backup copies of computer programmes
- Soundtrack records
- Reverse engineering

4. Recommendations to implement measures in the South African context

As revisions to the Copyright are considered, it is also important to note that, as indicated by Professor Owen Dean (cited in BusinessTech, 2022), South Africa's copyright amendments are flawed and outdated, and has called on the government to bring it more in line with modern norms and terminology. Nicholson (2022) indicates that advocates for fair and more balanced copyright laws have pursued a strong campaign for change within the framework of access to information as a human right as well as international and regional copyright trends and legal commitments. The various views and concerns (such as those of persons with disabilities and the creative producers) need to be resolved in a manner where constitutional rights of all parties are protected. One potential intervention that can be driven by the Department of Sports, Arts and Culture (DSAC) is to define processes and procedures when works are adapted or reproduced for public good and/ or to ensure accessibility in diverse formats, including remunerating the copyright owners. As Kretschmer and Margoni (2018) state, societies with more access to knowledge (including cultural and creative content and platforms) are better off, being more culturally attractive, economically competitive and technologically advanced. This, they argue, results in more innovation, jobs and well-informed citizens; and, therefore, copyright law is instrumental in achieving this broader public policy goal.

Mechanisms and the necessary systems and infrastructure need to be in place to facilitate the registration of copyright works that are sensitive and supportive of the diversity of domains/ genres in the CCIs and the different types of creative producers, many of whom are unlikely to have the resources or the know-how to follow lengthy, legal processes to register their creative content/ works. A database needs to be developed and maintained of creative content and works, including records of the death of authors, sale of works, when made public, etc. This will also assist in ensuring copyright protection for designated periods as stipulated in the legislation. Amendments to copyright law have been contentious and lengthy. It is imperative that issues be addressed so that more updated, relevant and comprehensive legislative frameworks can be instituted to protect creative content and other forms of copyright in South Africa. Additionally, there should be initiatives to raise awareness of measures, especially policy and legislature that protects the rights of the CCIs.

Audience consumption and preferences need to be monitored, not necessarily in terms of 'sales' but intangible 'feel good' values that align with the public good doctrine of creativity. Lessons from the economic valuation of ecosystem services (Villegas-Palacio et al., 2016), also deemed to be a public good that is exploited and inadequately recognised and protected, can provide guidelines for the CCIs. Villegas-Palacio et al. (2016) state that economic valuation allocates an amount in monetary units of the value that a change (in the context of CCIs this can be added to include the provision of creative content and experiences) can have on the welfare of human communities. This application, guided by clear criteria, can be used to attach an 'economic value' to creative content that considers the public good aspects as well as commercial success when disputes arise in terms of copyright infringements. However, to implement this measure, specialists/ experts need to be trained to undertake these

valuations (and how to incorporate audience preferences) and courts sensitised in their applications. There also needs to be sensitivity to the diverse types/ genres of CCIs. Again, advancements in ecosystem services valuation can be useful given the diversity in relation to ecosystem services provided as a public good that include carbon sequestration, habitats for diverse species, climate and waste regulation (including flood and pollution control), natural food and resource provision, and educational and leisure/ recreational opportunities (Chakraborty et al., 2020; Kobryn et al., 2018).

It is also recommended that a dedicated legal aid team be established in South Africa for the CCIs to ensure protection and enforcement. Copyright legislation is often difficult to enforce and ensure reparations for copyright owners when infringements occur. Furthermore, the burden is often placed on the copyright owners to prove the infringement in a court of law, which requires expertise and resources. Additionally, Kamaar and Diedericks (2021) assert that in South Africa the most common basis on which damages are calculated is the reasonable royalty method (that is, the amount of money that would have been payable had the infringer obtained a licence from the author of the copyright work) which requires the author of the copyright work to submit sufficient evidence to show the damages suffered. This is often not easy to do and copyright owners, especially in the CCIs where creative content can pose challenges as discussed earlier, need assistance which a legal aid team can provide, given that copyright infringement matters in South Africa are dealt with in the High Court (Blignaut, 2021), which is significantly more expensive. Kamaar and Diedericks (2021) state that the costs of infringements in South Africa range from R150 000 to R300 000 just for attorney fees. The DSAC should engage with the Department of Justice to establish what types of infringement can be dealt with in the Lower Court, and whether it is feasible to constitute an authority/ agency that is dedicated to deal with certain types of infringements that do not require formal court proceedings. Furthermore, the Copyright Tribunal, which the Copyright Act makes provisions to establish to deal with disputes arising between licensing bodies, or other persons from whom licences are required and persons requiring licences or organisations claiming to be representative of such persons (Blignaut, 2021), should be extended to have a sub-committee that deals specifically with creative content matters.

It is worth considering the application of patent right requirements in relation to certain types of creative content, material and platforms. Bartholomew (2021) indicates that there are high standards for innovation (scientific creativity or novelty) that qualifies to be patented (thereafter having high levels of legal protection) while there are almost no standards for other types of creativity. This legal gap needs to be addressed, especially to accommodate advancements in digital technologies that enable those who can access technologies to generate images and creative content by touching buttons. The need to centralise 'motivation' and 'artistic initiative' in creative content development is advocated by Bartholomew (2021) to inform copyright protection. The importance of "the author's contribution for deviation from what came before" (a key requirement for scientific innovation that inventors must provide evidence for) can apply to the CCIs as well, where artistic innovations need to be encouraged and incentivised for copyright protection (Bartholomew, 2021: 412).

In the South African context, the Department of Higher Education and Training's (DHET, 2017) Creative Outputs and Innovations Policy for Public Higher Education Institutions can be broadened for the CCIs more generally. The policy is intended to incentivise the generation of

creative outputs at universities, linked to a subsidy provided to the institutions. Key aspects that are noteworthy include:

- Recognition of different types of creative outputs (such as fine arts and visual arts; music; theatre, performance and dance; design; film and television; and literary arts) and specific criteria for each type of output.
- The responsibility of the author/ creative content creator to provide the evidence to support originality, contribution to the field/ knowledge and mastery of the medium/ genre.
- Creative outputs must acknowledge all creators who contributed to the creation of the creative research output.
- The importance of expert reviewers (in relation to the specific type of creative contribution) and peer review process to assess the creative contribution and ensure quality assurance and ethics.
- The importance of collaboration since DHET works closely with the National Intellectual Property Management Office (NIPMO) on the implementation of the policy regarding innovations.

These aspects align with the need to be sensitive to different types/ domains of creativity and support Bartholomew's (2021: 357) assertion that research reveals that "those with expertise in a domain tend to independently agree on their assessment of the creativity of new works in that domain". In South Africa, it may be prudent to have a database of experts (who can also advise the legal aid team suggested earlier) for the different types/ genres of CCIs who have stature and established recognition. Expert advice can assist in addressing copyright infringements and fair use contestations. The costs of providing this type of support (expert inputs, legal aid, etc.) need to be considered by DSAC. The possibility of a dedicated fund for this initiative should be considered.

If access is linked to the public good doctrine, then 'the public' should pay for broader access. This implies that government should ensure that there is a mechanism to remunerate/ compensate creative content producers and owners for losses incurred when content becomes accessible (without compensation) for fair use and fair dealing purposes. This could be done in collaboration with the private and donor sectors where partnerships can be encouraged to support initiatives that make creative content available to the broader public and ensure that the rights of creative content producers/ owners are protected and that they are adequately protected. This approach is not new. As indicated in the SACO (2019a; 2019b; 2020) reports on public, private and venture capital funding for the CCIs, the sector already receives considerable support from the public, private and philanthropic sectors. However, the protection of rights needs to be integrated into legislation and mechanisms need to be in place to ensure that public rights and the rights of creative content producers/ owners are balanced. It is also important to note that in relation to royalties, there are often collecting societies/ agencies (such as publishers). There needs to be oversight and appeal processes (should be undertaken by the constituted South African Copyright Review Commission) to ensure that royalties/ compensations are properly determined and allocated, and funds are disbursed to the rightful copyright owners. The South African Copyright Review Commission (DTI, 2011) report raised concerns about artists receiving royalties and made important recommendations that DSAC should consider in the context of creative content:

- Improve access to education
- Regulate and effectively monitor collecting societies
- Facilitate fair and speedy payment of royalties to rightful owners

5. Conclusion

The protection of creative content and the ownership of creative materials and platforms have several implications for the Cultural and Creative Industries (CCIs), which include:

- Ensuring economic and other forms of reward/ incentives are accrued
- Protecting the rights and intellectual property of creative owners and contributors – does the legislative environment support or undermine protection and ownership?
- Awareness of and enforcing copyright as a legal right that protects the use of creations
- Understanding the implications of fair use and fair dealing
- Different measures to ensure protection such as Creative Commons licenses, digital image watermarking, etc.
- How can individual creative producers, companies and organisations protect their creative contributions/ works?

This desktop study addresses these issues, highlighting the importance of better understanding the need to protect creative content, material and platforms; especially in the digital era. The paper examines what constitutes creative works, the legislative environment, copyright protections, fair use and fair dealing, and the influence of technological advancements, including digital protections, co-production and artificial intelligence-driven creativity. The main measures to protect creative content, material and platforms are also discussed, which include copyright, fair use and dealing, Creative Content licensing and technological protection measures. The main recommendations are to revise/ amend and update legislation, mechanisms and the necessary systems and infrastructure to facilitate the registration of copyright works that are sensitive and supportive of the diversity of domains/ genres in the CCIs, audience consumption and preferences be monitored, lessons from the economic valuation of ecosystem services be adapted for the CCIs, a dedicated legal aid team be established in South Africa for the CCIs to ensure protection and enforcement, consideration of the application of patent right requirements in relation to certain types of creative content, broadening of DHET's (2017) Creative Outputs and Innovations Policy for Public Higher Education Institutions for the CCIs, and mechanisms to remunerate/ compensate creative content producers and owners for losses incurred when content becomes accessible for fair use and fair dealing purposes.

From a social and human rights perspective, advocating for fair use and fair dealing as well as liberalising accessibility of content for persons with disabilities, educational and leisure purposes, and to ensure more equitable consumption and experiences associated with creative content are well intentioned. However, this consideration needs to be balanced with ensuring that the rights of the content producers and owners (including their economic rights to earn income) are also protected.

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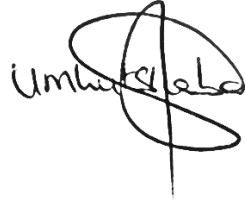
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APPROVALS FOR THE SOUTH AFRICAN CULTURAL OBSERVATORY – Identification of potential measures to protect South African content and South African ownership of creative material and platforms - September 2022

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