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Talking Heads: conversations on copyright

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How do you negotiate the copyright environment in your daily jobs? In this chapter, stakeholders from within communities that are directly affected by intellectual property regulations, talk about the challenges that they face, and discuss how they have overcome some obstacles brought about through either ambiguities, or absence, in the South African Copyright Act.

4.1 Jace Nair, the National Executive Director of the South African National Council for the Blind (SANCB)



Jace Nair was the National Public Fundraising Manager at the Aryan Benevolent Home (ABH), an NGO in Chatsworth. Following this, Jace joined the Blind and Deaf Society in 2000 as the CEO. Nine years later he was appointed the National Executive Director at the SANCB.

Talking heads key definitions

TVI refers to the Treaty for the Improved Access for Blind, Visually Impaired and other Reading Disabled Persons, which was initiated by the World Blind Union.

Standing Committee on Copyright and Related Rights, called the SCCR, is a committee established to look at harmonising copyright and related rights, looking particularly at limitations and exceptions regarding education, libraries and persons with disabilities, and the protection of audiovisual performances and broadcasting organisations.

Sabinet facilitates access to electronic information and includes services such as digital management systems.

LIASA FAIFE is the Free Access to Information and Freedom of Expression Standing Committee of the Library and Information Association of South Africa.

How does the current SA copyright Act impact on visually impaired persons?

Jace: The current Copyright Act of 1978 impacts quite heavily on blind and partially sighted South Africans. The Act does not make adequate provisions for exceptions and limitations, thereby we find that published works are generally not made available in an accessible format, to blind and partially sighted persons. The works that are



To listen to the audio recording you will need to be connected to the internet. Click on the link or read the transcription

<http://soundcloud.com/user8870788/access-to-knowlege-for>

made available in an accessible format are made largely by NGOs.

Jace, how do most blind and visually impaired persons access educational materials?

Jace: This is a serious challenge for blind and partially sighted persons in accessing education materials, at school level as well as at tertiary level or higher education. There are currently 21 schools for the blind in the country, and most of the learners attending these schools do not have most of the textbooks in an accessible format. Teachers will sometimes have to Braille a page or chapter of a work. The 'SA library for the Blind' and 'Tape Aids for the Blind' have also converted some educational works onto audio, but most of the educational works are not available, particularly in Braille. For students that are at tertiary institutions, some of the disabled students units throughout the country try to make arrangements for prescribed books to be converted. It can take time for these to be made in an accessible format. I am aware of students, particularly at some universities, that have waited from between three to six months before they have received the study material.

So that can really impact extremely negatively, and strongly, on blind and visually impaired persons?

Jace: It certainly does and particularly when it comes to, for instance, Maths and Science. That is even more challenging. We do not really have textbooks available in those subjects in this country. It limits the kind of career choices that blind and partially sighted persons would have at university or at a tertiary level. As a result of not having textbooks available, blind and partially sighted learners do not have a wide choice of subjects to choose from when they are at school. Most of the schools that blind children attend, you would find that there are just five or six subjects from which all students have to choose. So the result is that when they leave school, you will find that many of them are unable to get university entrances because they are writing five subjects. They get an endorsement as a learner for special needs education. This limits them attending university or participating in scarce skills.

“ Not having textbooks limits the kind of career choices that blind and partially sighted persons would have; it limits them in attending university or participating in scarce skills.

Having said that, what kind of exceptions and limitations would you wish to see in the Copyright Act?

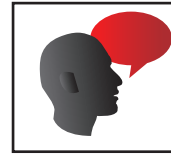
Jace: As The South African National Council for the Blind, and as a representative of the Coalition that was set up to lobby for reform of the SA Copyright Act, as well as for the International Treaty (note: this refers to the International Treaty for the Blind and Visually Impaired Persons), our first approach, is that we would want to encourage rights' holders and publishers to make their works available in an accessible format.

We, too, would also like to purchase those books so that we are able to read those books immediately that they are published and not wait six months to a few years before we can get access to some of these publications. We believe that if publishers do not make the works accessible for blind and partially sighted persons, then the limitations and exceptions should allow for the reproduction of that work into an accessible format, without licence, and without infringement of copyright, so that these documents, or these publications, may be made available to blind and partially-sighted persons on demand.

We also believe that, you know, it should allow for cross-border exchange so that we may be in a position to bring in books from overseas, and also send books that have been produced, out of the country.

We also believe that it should allow for parallel importation so that, if we are able to access a particular title cheaper than from other countries, we should be allowed to do that.

And then, Jace, at the international level, what is being done to improve access for the blind and visually impaired persons?



Jace: The World Blind Union, which is an association of all blindness organisations throughout the world, has been advocating now for the last two decades at WIPO for an international treaty. However, since 2009, this advocacy has become much stronger when Brazil, Ecuador and Paraguay decided to sponsor the World Blind Unions' Treaty at WIPO. Since then, there has been intensive lobbying and advocacy to propose an international treaty on exceptions and limitations for visually impaired persons. And over the past two years, in particular, the debate has become very intense: the World Blind Union and member organisations throughout the world, have been lobbying governments as well as international agencies. And currently, what we have is a single text proposed by the Chair of the Twenty-Second Session of the Standing Committee on Copyright and Related Rights (at WIPO) in June of this year, whereby the full text from the EU, United States, Brazil, Ecuador, Paraguay and Mexico, and from the Africa Group, where it was discussed in depth, and now we have a single text. The World Blind Union has been requesting for improvement in terms of the language of the text so that we can make the document much stronger.

The debate now is in terms of the instrument. We, in South Africa, as well as the World Blind Union, are very clear that what we would prefer is an international binding agreement, like a treaty, that would aid and assist developing countries to get out of the book famine. That is the kind of approach we currently have in the country and internationally.

Thanks so much for taking the time, Jace. Nice chatting to you and we'll chat soon. Cheers. Bye.

4.2 Caroline Ncube, legal academic from the University of Cape Town (UCT), talks about making multiple copies for educational use



Caroline Ncube has been a lecturer in the Department of Commercial Law at UCT since January 2005. She has played an instrumental role in the ACA2K project and was recently invited to speak

at a workshop - 'Copyright, copy chaos and everything in between' - for librarians and educators. The following transcription, on the practical implementation of the exception for education on multiple copies, has been remixed from Caroline's presentation at that workshop.

To listen to the audio recording you will need to be connected to the internet. Click on the link to listen to Caroline or read the transcription <http://soundcloud.com/user8870788/access-to-knowledge-for>

Caroline: Multiple copies may be made, for a teacher, for classroom use, for discussion. So what this means is you can make, if you have ten students in your class, ten copies: one for each student. What's quite interesting, is what constitutes a classroom? Does this mean a classroom like we are here? Is it a virtual classroom. If I'm having discussions with my students in a chat room, is that a classroom? The law doesn't say it's not, so you could take a chance and say: 'Well, if I'm going to have a discussion of this text with my students in our chat room, on our virtual learning platform, I can make copies for each one of them.' You could take that chance.

The thing about when issues are not clear, is that most of us, certainly myself, will play it safe. I would rather not do it, if it's not absolutely clear that I can do it. So that is the problem with lack of clarity: it restricts people because they will play it safe.

Of course, a teacher can make a single copy of a text for his own purposes: for research, for teaching, or preparation for teaching in a class. That's fine and it's not controversial.

Regulation Eight of the Act states that a teacher can make a copy for preparing for class, or for teaching, or to make a copy for each student for classroom use or discussion.

“ It is a fallacy to say that by making a copy, someone is stealing a potential customer from a rights' holder. The person who got the copy might never have bought the original text in the first place. ”

However, the Act goes on to say that one may not repeat that kind of copying, in respect of the same material, by the same teacher, from term to term. So, if I've got the one course that I am teaching this semester, and I make single copies for them of that material; then, strictly speaking, according to that provision, I can't copy the same text next term for a different group of students. What it [the Act] seems to be implying, is that I should have a running set of materials. That means that I could use the batch of materials for term one, but when I teach the same course in term two - if I don't have a licence negotiated directly with the rights' holder and I'm only relying on this clause - then I can only use a different set of materials for the next term.

And under the Copyright Act Regulations, you can't actually make copies of temporary works; you can't copy workbooks and standardised texts and so on.

The first clause of the Regulations is perhaps interesting, in that it states that copying may not be used as a substitute for the purchase of books, publications, reprints or periodicals. But not all students are going to purchase old texts anyway. Some may not be able to afford them; some may be able to afford to purchase them, but might not choose to do so. So this idea that's been used within discussions of copyright law is a fallacy: to say that by making a copy someone is stealing a potential customer from a rights' holder. The person who got the copy might never have bought the original text in the first place. This idea of substituting the purchase of a copy with infringement of a copy doesn't always make sense. The argument is usually used in relation to online music or sharing of digitised music. It is fairly easy for you to say, if a friend of mine gives me an mp3 of a particular artist's music, somehow they have deprived that artist of a customer.



To listen to the audio recording you will need to be connected to the internet. Click on the link to listen to Catherine or read the transcription <http://soundcloud.com/user8870788/a2k-for-education-with>

4.3 Catherine Kennedy, Director at the South African History Archive (SAHA) on orphan works and grey areas around struggle posters



Catherine Kennedy is the director of the South African History Archive (SAHA), a human rights NGO in Johannesburg. Catherine talks about SAHA's struggle poster collection and how they fall into a 'grey' area in terms of South Africa's

current copyright law.

Catherine, please could you tell us about SAHA and the collections you keep.

Catherine: SAHA stands for the South African History Archive. We are an independent human rights archive based at the University of the Witwatersrand. We were started up by the UDF in the 80s; we were UDF affiliates in the 80s. And we are basically committed to collecting and raising awareness around material that relate to both past struggles for justice in South Africa, particularly obviously apartheid, and then ongoing contemporary struggles of the making of democracy in South Africa. So we are interested in the relationship between human rights and documentation, human rights and archives.

Now your posters collection, I believe that it has been slightly problematic for you in terms of the current Copyright Act. Could you describe the challenges that you faced with these collections?

Catherine: The poster collection we got is primarily made up of struggle posters, political posters from the 80s made by UDF affiliates. And because of the way the struggle operated, a lot of the people who were making these posters were volunteers, they needed to remain anonymous because of the State - the politics of state repression. They were students in basements, you know. And they were often working very collaboratively. So one person would say: I think we should put green in there and one person



“I think one of the big issues in our legislation is that it doesn’t define - or look closely at - what constitutes fair dealing.

would sketch out the person and what was going to be the background to the poster. So really, these posters break down the idea of the creator; they don’t speak to the Copyright Act, in that there isn’t a clear relationship between, let’s say, the employer and the employee, so you can’t say the employer or the organisation holds the copyright because they were volunteers. A lot of the organisations were banned at the time. A lot of those organisations are now defunct because they no longer need to exist. So the posters, and the idea of copyright on posters, just falls into this weird, grey area that the legislation doesn’t speak to. But because people are very scared, obviously, of infringing copyright legislation, it means that people’s hands are a bit tied about how they can use the posters.

Catherine, what solutions, if any, have you found that will help this process of making these posters available?

Catherine: Well, we took a step back and we tried to look at the posters; as the purpose; the intention behind the original creation of the posters. And most of the posters were made with the intention of public information, public communication, and if you actually think about the process of production of posters - obviously this is prior to digitisation - they were designed, inherently, to be reproduced, at low cost. So given that they were supposed to be about making information available to the public, we have rationalised that if we keep within the spirit, the original intention of the posters, that is making essentially rights’-based information available, advocating around issues, human rights issues and making that information available to people, we wouldn’t be really stepping that far away from the original intention of the posters.

There is no issue of economic loss. There is no issues of making money in anything that we do with the posters. And that’s an important measure for us, as well. It’s not as if we’re saying, we’re producing the posters so it should be okay for everybody; it should be okay for fashion designers

to plaster UDF posters all over tee-shirts and sell them for R1,000.00. We’re saying that the reproduction of these posters should be acceptable, if it’s been done for non-commercial, heritage and educational purposes, within the original intention of the poster.

And this is an approach we have spoken to about with various poster makers; identified poster-makers from the period, and tried to get their support. We drew up kindof copyright in-principle agreements which we’ve asked poster-makers to say that they agree with this approach: that they generally think that the posters should be made more readily available, and that was why they were created in the first place - to be communicating these issues as broadly as possible to South Africans. And we got a lot of support for that, and it speaks to the idea of, if you are uncertain about copyright issues, going back to the community of practice that relates to the materials in question, is often a good measure of what constitutes fair use or fair dealing, in the reproduction of material.

The Copyright Act doesn’t actually talk to this at all, so what should the Copyright Act have included to have made that an easier process for you?

Catherine: Well, I think one of the big issues in our legislation is that it doesn’t obviously define or look closely enough at what constitutes fair dealing. We need a greater sense of what that constitutes. We follow notions of best practice from other places in the world, but that isn’t really a defence. A lot of definitions in the Act are very unclear and I mean I know that there are arguments that sometimes we can use that to our advantage in terms of interpreting the Act but it really does paralyse people.

I think we also need to have a greater discussion around what an orphan work is, particularly when we think about liberation struggle material. And we also need to look more closely at the intention behind the reproduction, particularly when it comes to education, when it comes to heritage and possibly how those intersect with constitutional issues around access.

Not necessarily relating to our collection - I mean

our poster collection - but other collections within SAHA and materials that are in libraries and archives generally, I think there is a greater need to consider the way we reproduce materials in archives and libraries in the Act, and possibly greater harmonisation with things like heritage legislation and indigenous knowledge legislation. Because I think the notion of heritage is just so absent from our Copyright Act.

Catherine, that's really great. Thank you so much for chatting to us.

4.4 Ansie van der Westhuizen discusses UNISA's digitisation of selected collections



Ansie van der Westhuizen is the Digital Collection Developer at the library of the University of South Africa (UNISA). Ansie has a keen interest in digital scholarship and online open access. She has been at the UNISA library for over twenty years, and is currently responsible for the development of digital scholarly collections and the management of the UNISA Institutional Repository.

UNISA is currently undertaking a digitisation process of some of its collections and we chat to Ansie to find out about the process so far.

Ansie, please can you tell us what this project involves?

Ansie: The name of the project is UNISA Library Digitisation of Special Collections. It consists of a selection of seven special collections from the UNISA Archive that we would like to digitise, and the time-frame of the project will be two years. The collections have priorities and it will be digitised by experts at Sabinet. The completed



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<http://soundcloud.com/user8870788/access-to-knowledge-for-2>

collections will be described and disseminated on an open digital repository and will be searchable via major search engines such as Google and Yahoo. The scanning of the items is done in the UNISA archives because of the fragility and also the uniqueness of the materials.

Now why has UNISA decided to undertake this digitisation project?

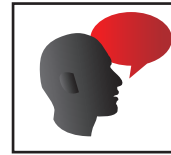
Ansie: Well, at present, researchers have very limited access to the Special Collections Archive, and the objective of this project is to extend the reach and access of the archive. And the materials, as mentioned, are unique and fragile, and frequent handling shortens their lifetime significantly. Therefore, if it's online, more researchers will be able to consult these online versions without physical handling. It's also going to provide simultaneous access for multiple users, 24/7 and then the preservation of these materials will also be done whilst they are in good condition.

Now Ansie, what do you directly in the project?

Ansie: My role as the collections developer was to select and prioritise these collections. And I also have to prepare the cost study and the proposal for funding for the project. I had to motivate for its outsourcing and I had to prepare the technical specifications for the project: that also serves as an important input for the tender documentation.

What challenges so far are you finding arise with copyright when doing a project such as this?

Ansie: The materials are donated to the library but not the copyright. The copyright is not donated with the materials. Therefore, we have to obtain copyright. First of all, we have to determine the copyright status of the items; some of them we don't have to request copyright permission. But before you can request the copyright permission, you first have to find out who the copyright owners are. After you have identified the copyright owners, you have to locate them. Sometimes this is a very big challenge, because many of them cannot be found and in many other cases they are no longer alive. Once you actually find them, many of them are



reluctant to give permission. You know, they think they can earn some money out of them. Some of the items are very sensitive like personal correspondence and so on, and they are very hesitant to have this available online. So the other challenge that I have also encountered, is that we have to follow the protocols, as some of the owners are in high positions. For example, with one of our collections - The ZK Matthews Collections - we have to contact the Minister Naledi Pandor, to get permission for these items, and we have to work through all the protocols. After we've made contact with the copyright owners, we then have to negotiate with them and sign both the due diligence and the contract. It's a very lengthy process. And the other thing is that some of these people are out of the country.

Have you and your team been able to come across any workable solutions that you're finding, that could assist with any copyright issues in the project?

Ansie: Well, first of all, I've found that if you start digitising, try to identify collections without copyright restrictions. Because once you are starting this copyright process, you will have to deal with this challenge. My other suggestion is that if you have to get copyright permission or negotiate copyright, you must start early. If you are negotiating a work with a donor for a collection, I would suggest that you should also include digitisation, or the provision for digitisation, when you obtain the collection.

So you mean, like upfront? ...

Ansie: Yes, when you negotiate for the collection you can put it in the terms and conditions. You should actually tell them that you are willing to digitise the collection as an option for preservation. And then you should explain the benefits to the donor. In many cases, they are much more willing if they hear actually what the benefits would be of digitisation. Also, personal contact with the copyright owner is very important, and it will help you a great deal. You can request the executive director or the principal: some of the stakeholders at your institution to support you in this regard. Don't try to bypass the protocol; that doesn't work and it only slows down the process. If you cannot obtain the copyright owner, what we did

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with some of these items, is that we are going to add a notice to the webpage to tell the people that we could not locate the copyright, and if anybody comes across these items in this collection and they don't want it to be online, they are most welcome to contact us and we will deal with the issue; and remove it, or restrict it, or whatever the case would be.

And then, what changes do you think you would like to see in the Copyright Act, from your experience with this project so far, that would make it slightly easier to undertake?

Ansie: I am not a legal expert, and I can just speak from my own experience. I think that the Copyright Act is very important, because it protects the intellectual property of copyright owners. And with digitisation, infringement of copyright is made easier. In this case, I would say exceptions in the Act with regard to the digitisation of unique and rare materials that support cultural heritage, such as historical documents and orphaned works - that should actually be in place in the Act, because it will support the preservation of this cultural heritage. Also, if these rare materials and primary resources are used for study and research purposes, they should also be made available and there should be provision for that in the Copyright Act.

Is there any particular vehicle that you are using: how are you actually licensing the materials?

Ansie: At this point in time, we don't have the Creative Commons licence attached to the objects. But I was thinking of including this in the final items. I have experimented slightly with the licences on our system. However, for the time being, we are putting a copyright notice on the collection which tells people that the copyright of the digital objects belongs to UNISA, unless indicated differently. We also state that people

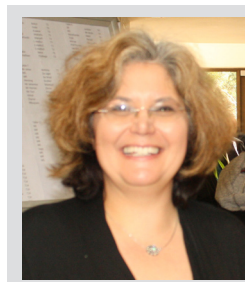
can use the materials freely: if it's open access they can use it, but they have to acknowledge the copyright owner as indicated.

Is one able to download the objects?

Ansie: Yes, it will be available online and can be accessed from the UNISA website. There is a link to the UNISA institutional repository. Or you can simply go to: <http://uir.unisa.ac.za>.

Ansie thank you so much for chatting to us; we wish you all the very best with your digitisation project and we hope that it all goes well.

4.2 Karin Marais, a principal librarian at a specialist library, discusses her own personal learnings and best practices



Karin Marais works as a librarian at a specialist library. Throughout the years that Karin has been a librarian, she has adopted sound practices that assist her in her work, when navigating the local copyright environment.

Karin, what is your position at the library?

Karin: I am the Principal Librarian.

And what typical things are you required to manage or to undertake in your job?

Karin: My job entails collection-development, including managing of subscriptions, cataloguing and classification, to ensure access to library and information services, making available links for example on the intranet page, to ensure library staff are able to give guidance in, and facilitate searches, and to ensure continuity of the routing service. Furthermore, I also monitor and provide feedback to the library supervisor on the library budget, as well as on library usage.



To listen to the audio recording you will need to be connected to the internet. Click on the link or read the transcription:
<http://soundcloud.com/user8870788/access-to-knowledge-for-1>

And Karin, what challenges do you face around copyright?

Karin: Restrictions in the copying or lending and borrowing of various formats, that is photocopies versus increasing demand for digital information. If one's organisation also publishes, then one may perhaps be asked to assist an author in contacting another publisher in order to request publication of an excerpt from another publication. In the case of the latter, I've found that DALRO has proved a very useful contact in tracing the correct publisher. Another challenge in copyright, is in acknowledging the creator of an item. If it's not clear from the item itself, for example, a photograph that's distributed via email but could be found to be relevant to one's library's subject field, especially for researchers. Then I also find that there is a need for clear guidelines on the South African Copyright Act or perhaps just a website for one to find answers to frequently asked questions.

With these challenges, for example, the photographs, how do you get around it, if you come up against this brick wall?

Karin: At this point in time, there is a folder that I have created and made available for case studies. For example, I do actually save that email with the photographs, but the users are made aware that they need to know that the information regarding those photographs and the creators of those photographs, is subject to copyright, although we do not know who the authors are. And they have to be aware of that. Another facility that I do make the users aware of, is to make use of the Creative Commons website, and I do encourage users if they do have their own photographs available that they have themselves taken, to perhaps make use of the Creative Commons licensing. So they themselves, then, have control over what restrictions or waivers they permit with regard to that photograph.

What advice would you give to other librarians around intellectual property or copyright-related problems?

Karin: My advice would be to attend seminars, arranged by LIASA FAIFE. I've found it most useful. All questions may not be resolved all



at once, but it does provide a forum for debate and to also help build a network of contacts. It was actually through one such forum that I have learned about Creative Commons licensing, where the creators indicate which rights they reserve or waive, and therefore also provides the opportunity for proper acknowledgment of a creator.

Okay, is there anything else; any other type of thing that you have personally found a way to get around?

Karin: Make sure that you know what the licence agreements entail, especially with regarding access to databases, and the electronic journals that we subscribe to. And it's important, with regard to who may download those articles and by which users within our network.

It's also important to involve the organisation's legal advisor regarding especially any new or changes in licence agreements. Those licences

may be available on the particular publisher's website and one needs to print it out. If you've newly ordered, then it will go to the legal advisor. One does take note of specific items to look at: who is able to have access. I usually also advise users that libraries are not always at liberty to provide digital versions or copies of an item. If it is a much-required book then one would motivate its purchase for one's own library collection in the end. If there are restrictions on the provision of a digital copy of an article, then a print copy is provided with a copyright notice for inter-lending purposes to that information, and when providing access to it, to advise the users appropriately. The information is normally made available via our website, which I print out and provide to the legal advisor to also go through.

Karin, that's great. Thanks very much for chatting to us and all the best.