

Honourable Ms J Fubbs

Chairperson

Portfolio Committee on Trade & Industry

Parliament of the Republic of South Africa

Cape Town

By email: ahermans@parliament.gov.za

28 June 2017

Dear Honourable Ms Fubbs

SECTION27 Submission on the Copyright Amendment Bill B-13, 2017

Introduction

1. SECTION27 is a public interest law centre that uses and develops the law to advance human rights. It conducts research, advocacy and litigation to achieve its goals, which include a focus on the right to have access to health care services in general and medicines of proven quality, safety and efficacy in particular.
2. SECTION27's primary interest in intellectual property policy and law reform flows from its understanding of the manner and extent to which patent protection has been used to undermine access to medicines. SECTION27, together with its partners, has worked for many years to limit the negative impact of intellectual property on public health.
3. SECTION27 welcomes the opportunity to comment on the Copyright Amendment Bill.

Section 2 of the Copyright Bill

4. In 2015, SECTION27 and Doctors Without Borders (MSF) made written submissions to the Department of Trade and Industry (DTI). We note that SECTION27's and MSF's call for an

amendment to section 2 of the Copyright Act has been accepted and addresses the implications of copyright protection for pharmaceutical package inserts. The Amendment Bill deals with this in the following way:

“ (4) Notwithstanding the provisions of section 2, no protection shall—
(a) extend to an expression—
(i) inextricably merged with an idea such that the idea can be expressed intelligibly only in one or a limited number of ways; or
(ii) when the particular expression is directed by law or regulation such that only one form of expression will meet regulatory requirements, for example on a safety label;”

5. We recommend that the amended section 2 is retained in this form as we believe that it removes barriers to the registration of generic medicines, which have been shown to lower the cost of medicines in both the public and private health sectors in South Africa.

Section 29C of the Copyright Bill

6. The new section 29C deals with the disqualification of members of the Tribunal. Section 29C provides that a person may not be appointed or continue to be a member of the Tribunal if he or she “is subject to an order of court holding that person to be **mentally unfit or disordered**” (our emphasis).
7. On 9 December 2016, the Criminal Procedure Amendment Bill, B 2 – 2017, was published following an order handed down by the Constitutional Court in *De vos v Minister of Justice and Constitutional Development & Others* 2015 2015 (2) SACR 217 (CC). The Bill removes the out-dated term, ‘mental defect’ in favour of the more appropriate and dignified term, ‘intellectual disability’ throughout the Act. This is in line with the language adopted by the Constitutional Court.
8. The Minister of Justice set out the rational for the amendment in the Memorandum on the Objects of the Criminal Procedure Amendment Bill 2017 as follows:

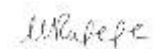
‘Clause 2 of the Amendment Bill aims to amend section 78 of the principal Act as follows: 2.2.1 Subclauses (a) to (d) and (f) are intended to replace the outdated term of “mental defect” wherever it appears in section 78 with the more acceptable term of “intellectual disability”.’

9. In our view, the equivalent, “**Mentally disordered**” in section 29C of the Copyright Amendment Bill should also be amended to “**intellectually disabled**”. This is not only in line with the Constitutional Court judgment, but also is in keeping with the commitment of the state to respect, protect, promote and fulfil the rights of people with mental illnesses and intellectual disabilities in terms of section 7(2) of the Constitution of the Republic of South Africa, 2006. SECTION27 recommends that the Portfolio Committee amend the new section 29C accordingly.

Conclusion

10. SECTION27 thanks the Portfolio Committee for the opportunity to make this submission. We note that we would like to make oral submissions during the public hearings.
11. SECTION27 endorses the submission of Centre for Health Innovation and the Public Interest (CHIPI) in its entirety, particularly its focus on advancing the rights of people with disabilities, which is one of SECTION27’s key priorities.
12. For any further information, please contact Umunyana Rugege at rugege@section27.org or 011 356 4100.

Yours sincerely



Umunyana Rugege

Attorney

SECTION27