DRAFT SUBMISSION BY NCLIS AND LIASA TO THE SOUTH AFRICAN LAW REFORM COMMISSION ON ITS DISCUSSION PAPER 140: PROJECT 25: STATUTORY LAW REVISION: LEGISLATION ADMINISTERED BY THE DEPARTMENT OF ARTS AND CULTURE.

WE, the National Council for Libraries and Information Services (NCLIS) (advisory Council to the Minister of Arts and Culture and the Minister of Higher Education and Training and the Minister of Basic Education on library and information services) and the Library and Information Association of South Africa (LIASA) (professional body for library and information services), wish to thank you the South African Law Reform Commission for granting an extension until 30 April 2016, to enable us to consult with our constituencies.

We now submit the following comments and recommendations on the South African Law Reform Commission’s Discussion Paper 140, Project 25: Statutory Law Revision Legislation Administered by the Department of Arts and Culture. Our commentary specifically relates to legislation that relates to library and information services, and/or legislation that we feel requires similar provisions in them to that of library and information services legislation.

1. **National Library of South Africa 92 of 1998** – We agree with proposed amendments in the Discussion document. We also recommend that clear and practical provisions are included in this legislation to address the very important issue of preservation, format-shifting from old to new technologies, accessibility for persons with disabilities, resource-sharing in various media, interlibrary loans, access for research, education, libraries and citizens in general. Many of these provisions have been recommended to the DTI for the Draft Copyright Amendment Bill 2015. These provisions are absent in the current National Library of South Africa Act and are necessary to enable the National Library to effectively carry out its mandate in the context of a developing country in a digital world, to benefit all South Africans.

2. **Legal Deposit Act No. 54 of 1997** – The current Legal Deposit Committee appointed by the Minister of Arts and Culture will make formal recommendations with regard to this Act, but we also want to point out that the correct names of legal deposit libraries for Section 6(1) are as follows:

   (a) the Bloemfontein Public Library
   (b) the Parliamentary Information Centre, Cape Town;
   (c) the Bessie Head Library Pietermaritzburg;
   (d) the National Library of South Africa, Pretoria
   (e) the National Film, Video and Sound Archives, Pretoria for purposes of certain categories of documents as prescribed;
   (f) the South African Library for the Blind, for purposes of certain categories of documents as prescribed
   (g) any other library or institution prescribed by the Minister for purposes of certain prescribed categories of documents.

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We also recommend that clear and practical provisions are included in this legislation to address the very important issue of preservation, format-shifting from old to new technologies, accessibility for persons with disabilities, resource-sharing in various media, interlibrary loans, provisions for research, education, libraries and general public. Many of these provisions have been recommended to the DTI for the Draft Copyright Amendment Bill 2015. These provisions are absent in the current Legal Deposit Act and are necessary to enable Legal Deposit Libraries to effectively carry out their mandate in the context of a developing country in a digital world, to benefit all South Africans. They are also necessary to enable Legal Deposit Libraries to ensure that their print and electronic collections, which form part of our cultural heritage, are properly maintained and preserved for current and future generations.

3. **South African Library for the Blind Act 91 of 1998** – We agree with the SALRC’s suggested amendments to this Act, but request that the SALRC includes the provisions in the Draft Copyright Bill 2015 for persons with disabilities. These provisions are crucial to access to information for persons with disabilities. It is also important that provisions for research and education, format-shifting from old to new technologies, conversions into accessible formats and preservation for perpetuity be permitted in this Act. Some of these recommendations have already been made to the Department of Trade and Industry with regard to the 2015 Draft Copyright Amendment Bill.

It is also very important that South Africa ratifies the 2013 Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, otherwise persons with disabilities will not be able to benefit from cross-border sharing of works in accessible formats which the Treaty specifically provides for. These provisions should also be included in the SA Library for the Blind’s amended legislation.

4. **National Libraries Amendment Act 23 of 1991** – We agree that this legislation is redundant and should be repealed.


6. **Cultural Laws Amendment Bill of 2008**, published in Government Gazette No. 31082 on 26 May 2008. The SALR Document makes no mention of this Bill, which proposed amendments to several pieces of legislation under the portfolio of the Department of Arts and Culture. As confirmed by Mr. Anil Singh, the then Director-General and Trisha Ramsunair, Legal Advisor, of the Department of Arts and Culture in 2008, it was necessary to amend this Act in two phases in view of the Copyright Law needing to be amended first. He said that Phase 1 would involve amending technical issues in the legislation, and that Phase 2 would involve more specific amendments relating to access to information, digitisation, preservation, accessibility for persons with disabilities, etc., which could only be done when the Copyright Act has been amended. The Draft Copyright Amendment Bill 2015 is currently being revised to take into account stakeholders’ submissions made in 2015, and it will be presented to Cabinet sometime in May 2016. Some amendments may already have been done to various pieces of legislation under the Cultural Laws Third Amendment Bill, but we are not sure what was amended. We therefore suggest that all provisions and flexibilities in the Copyright Act relating to archives, library and
7. information services, persons with disabilities, legal deposit, etc. particularly with regard to access to information, accessibility for persons with disabilities, digitisation, preservation, format-shifting, resource-sharing (e.g. interlibrary loans) and related activities be included in ALL pieces of legislation relating to library and information services, and archives and museums, where applicable.

8. **National Film and Video Foundation Act 73 of 1997** – We agree with proposed amendments in the SALR Document, but suggest that any provisions made in the Draft Copyright Bill 2015, relating to preservation, format-shifting from old to new technologies, access to information for education and research, and accessibility for deaf persons (e.g. sub-titles) should also be included in the National Film and Video Foundation Act 73 of 1997, to ensure access for all and preservation for future generations. The law should also allow for narration or descriptive audio-capture on films for blind and visually impaired persons.

9. **National Archives and Record Service of South Africa 43 of 1966** – We recommend a clear definition for “national archival heritage” (in p.33, 2.89). Similarly, provisions relating to preservation, format-shifting from old to new technologies, access to information for education, research and libraries, and accessibility for persons with disabilities should be included, where applicable, in this Act (based on recommendations made to the DTI on the Draft Copyright Bill 2015).

**Additional suggestions:**

**Page 5 – 1.13** – The impact of technology should be acknowledged.

**Page 12, 2.6:** Where does digital citizenship fit in? This is very important and needs to be addressed by one of the said Branches, or a new Branch.

**Flexibilities in intellectual property (e.g. limitations and exceptions in Draft Copyright Bill 2015 provisions) and Open Licences (e.g. Creative Commons) should be addressed in the SALRC Document. These are very important issues, particularly since the SA Government has adopted a Policy of Open Source and Open data, etc. Open Licensing should be included in the Acts mentioned in the above document, to ensure access, particularly to material housed in Government libraries, material published by Government, and/or under the control of the Department of Arts and Culture.**

We trust that our suggestions and recommendations will be considered and included in new amendments to relevant DAC legislation.

Dated at Pretoria on the 30. day of APRIL 2016

Ms. Denise Nicholson (Vice-Chair: NCLIS)

Ms. Segametsi Molawa (President: LIASA)