



IZINDABA ZABABHALI : NEWS FOR AUTHORS

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Of Writers and Readers

Keyan Tomaselli

ANFASA

Dedicated to empowering authors

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We have just emerged from the FIFA World Cup and writers everywhere seem to be engaged on the topic, whether they were for, against or neutral. I've been very

impressed at some of the political economic critiques offered of the World Cup that have appeared in the press. Good critical writing is indeed not dead, but engagement of these commentaries has been largely absent. Life must go on nevertheless. So, below are some ideas I jotted down while at the Magoebaskloof AGM. We can certainly promote the Association in these kinds of ways.

Since ANFASA is not a disciplinary organisation and does not organise conferences coinciding with the AGM, the idea of offering some support to delegates is a good one. Academics in particular might



Earth Football image courtesy of TFTS

find it difficult justifying attendance at ANFASA AGMs as a research activity and thus they might not be permitted to use their research funds for this purpose.

The idea however of organising a presentation as was done in 2010 on **how to convert a PhD into a book** is a good one and should also act as a draw card. This session raised a number of crucial issues that affect the academic sector as is indicated in the robust debate between Ruth Teer-Tomaselli on the one hand and Chris Thurman and Debra Primo (UKZN Press Director), on the other. The contradictions impacting academic practice were highly pertinent points for discussion. One way of attracting additional delegates might be to organise the AGM over a 90 minute period and then devoting the rest of the day to member participation in offering papers and panels on publishing. If the day is seen to be primarily a seminar then educators might be more likely to invest the time, travel and expense. Similarly, those from other sectors would also find greater interest.

Perhaps some form of e-pamphlet could be designed by ANFASA



Debra Primo and Chris Thurman at the 2010 ANFASA AGM



head office which all members could be asked to disseminate to their respective disciplinary associations to promote the Association? Certainly, I would encourage members to re-post this and previous newsletters on any appropriate listservs. This exposure would build membership while also building ANFASA's profile.

However, what I found most valuable at the AGM was meeting the many authors who are not academics, or who previously had been students and/or lecturers. This group was nevertheless involved in education in one way or another, as they were journalists, NGO workers and some were just looking for opportunities to promote their writing and/or publications in one way or another.

Writers/authors of course, require readers. Readers, as is becoming disturbingly evident to us educators, have an ever shortening concentration span. Popular magazines, for example, have responded with ever-shorter articles, providing more design (visual candy) than content. Some are now nothing more than a collection of very short inserts and meaningless factoids surrounded by advertisements. Students at overburdened tertiary institutions may now not be required even to write an essay anymore as other forms of computerized assessment take the place of writing and thinking.

Films and TV are not films or TV without audiences. YouTube in May 2010 outstripped for the first time the audience reach of the US TV networks. This is where readers are going, where they are becoming authors also. Authors require readers as part of the relationship. But of what kind? While many simply write for themselves (or the blogosphere), ANFASA is an organisation that assumes an industry, legislative environment and serious authors, with all that this idea entails. This could be a theme for another issue, however.

The current issue is a general one with articles from our usual hard-working authors. We'd be happy to consider articles from other members also of 500-700 words on the topics of interest to the ANFASA membership.

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Lost in Transnation: Afrikaans in a democratic society

Alfred Mautsane Thutloa

Language was a significant marker of identity in a racially segregated pre-1994 South Africa with English and Afrikaans being the official languages of business and commerce. Under pressure from internal political unrest and international sanctions, the South African apartheid state crumbled. However, the strong ties between Afrikaans and the previous political dispensation have seen the language losing its appeal among previously disadvantaged communities such as many traditionally first language (L1) Afrikaans speaking coloured¹ communities. A 2003 study by Professor Christine Anthonissen, from the Department of General Linguistics at the University of Stellenbosch, with further data collected in 2008 and 2009, indicated this language shift from Afrikaans to English among coloured communities in the Cape Metropolitan area.

Case studies in the Western Cape

The study by Anthonissen (2009) involved interviews with three women across three generations². Data was collected in 2003 in three families through interviews, and a further 11 families participated in the study from 2008 to 2009.

Data collected by Anthonissen (2009) indicated that language shift has occurred from generation 1 (65+ age category) to generation 3 (10 to 25+ age category) among coloured Western Cape communities. Additionally, generation 3 revealed an Afrikaans and English proficiency with a strong identification of English L1. It is important to note that a number of generation 2 parents enrolled their children in English L1 schools for better work opportunities. Therefore, English is regarded as a means to a "better and brighter future". Another study by Alexa Anthonie (2009) in Beaufort West utilised questionnaires to investigate the occurrence of language shift in a predominantly Afrikaans L1 community. Conversely, the study by Anthonie (2009), demonstrated that a resilient Afrikaans identity can act as a buffer against language shift, as the community showed a shift towards increased



bilingualism and Afrikaans remained an important factor to index their identity.

Language shift has taken place in a number of coloured communities across the Western Cape. Nonetheless, the process of language shift varies from community to community, in one hand, some communities in the Western Cape have experienced language shift over time (generation to generation), on the other hand, other communities have consciously decided to preserve their Afrikaans identity.

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Footnotes

¹ "Coloureds are descendants of the sexual liaisons between colonialists, slaves and the indigenous Khoisan." (Hendricks, C. 2005. *Debating coloured identity in the Western Cape*. 117-122).

² i.e. grandparents 60+, parents aged 35+ and children between 10 and 23+

Copyright infringement and Plagiarism – the same thing?

Copyright (K)wiki by Lee-Ann Tong

We've seen the headline: "well-known author/poet/academic accused of plagiarism", followed by the report of the alleged "copyright infringement" and "theft of ideas" – think Jooste, Krog and Viswanathan. Sometimes, albeit not frequently, legal action ensues but more often than not, nothing really happens except that a cloud hovers over the "plagiarist" for a while. The reason for this is that although plagiarism and copyright infringement may share some similarities and are often conflated, the two are not the same. Copyright infringement attracts legal sanctions whereas plagiarism (merely) raises moral and ethical censure.

Copyright is infringed when someone does one of the acts that are exclusively reserved for the copyright holder, without the permission of the copyright holder. An example would be reproducing or copying a protected work or part of it without the copyright holder's permission. However, not all unauthorised copying is necessarily copyright infringement. There are very specific legal requirements that must be met, one of which is that the work that has been copied is not in the public domain. A work may be in the public domain because copyright does not subsist in it or because the copyright has expired. One may use a work that is in the public domain without fear of copyright infringement, even if the author has not given permission. Another essential feature of copyright infringement is that the copying must have been of a substantial part of the work. This means that unless you reproduce a *qualitatively substantial* part of what is protected in the copied work, there can be no infringement – and by extension, it implies that you CAN use an *insubstantial* part of the protected work. In this case, there is no copyright infringement even if you do not acknowledge the author. Of course, a fundamental



principle is that there must have been actual copying - if a person comes up with a work that is the same or similar as a previously made work, without having copied anything, then there is no infringement. Intention to infringe is also not required and “innocent” infringement is possible.

The copyright legislation provides that in some instances, reproduction that would ordinarily constitute copyright infringement is permissible. However, the situations under which you can use a substantial part of another’s work without permission are quite limited, and usually involve an obligation to acknowledge the source. Finally, if you infringe copyright, you are liable under law and the aggrieved party could claim relief in the form of an interdict against you, a claim for damages, or delivery of the infringing works.

Plagiarism, unlike copyright infringement, is not the transgression of a legal rule. There is no “crime” of plagiarism or specific anti-plagiarism legislation, but it does give rise to censure and in some cases also sanctions. In the absence of a single definition, many different forms of reproduction may be branded “plagiarism” – from the verbatim copying of small and lengthy extracts of text, to the paraphrasing of work and even the use of the same ideas as another. However, a defining feature of plagiarism is that it involves the copying of another person’s work without acknowledging the original creator. This lack of attribution is a misrepresentation to the reader that what is being presented is the original work of the plagiarist. It is debatable whether intention to misrepresent the work as one’s own is required and it is irrelevant whether or not the work that has been plagiarised is protected by copyright. Although plagiarism *per se* is not a legal concept, a plagiarist may be held accountable by his or her institution or even publisher. For example, a university may regard staff and student plagiarism as a form of academic misconduct and impose a sanction in terms of the university’s conduct and disciplinary policies.

What does this all mean?

Well, these are muddy waters, and are even muddier when we consider that the author of a copyrighted work has the moral right to be named as such (See previous ANFASA Newsletter). However, if we stick to copyright proper and ignore the permissible infringements or fair dealing defences in the Copyright Act, then these are some of the possibilities:

- You use an insubstantial part of a copyrighted work without permission and do not acknowledge the source. The result is that you are not guilty of copyright infringement but may be accused of plagiarism.
- You use an insubstantial part of a copyrighted work without permission and do acknowledge the source. The result is that you are not guilty of copyright infringement and nor are you a plagiarist.
- You use a substantial part of a copyrighted work without permission and do not acknowledge the source. The result is that you infringe copyright and are a plagiarist.
- You use a substantial part of a copyrighted work without permission and do acknowledge the source. The result is that you infringe copyright but you are not a plagiarist.



Indigenous Knowledge Systems: Amendments to the Copyright Act

Kundayi Masanzu

2008 was a controversial year in copyright law circles owing to the introduction of proposed amendments to intellectual property laws, notably the Copyright Act. The amendments were intended to give legal recognition and protection to indigenous knowledge systems (IKS). The Department of Trade and Industry (DTI), the government department responsible for this legislation, drafted amendments to the Copyright Act that sought to include a 'traditional work' as a 'work' alongside other protected works in the Act such as literary works, musical works and artistic works – and to identify the indigenous community as the author of that particular work.

A public hearing was held and stakeholders were given an opportunity to make submissions to the DTI on the proposed amendments. ANFASA, with other stakeholders, was opposed to them because they were impractical. The main issue pointed out in submissions by all stakeholders was that although the legal recognition and protection of IKS is important, this cannot be achieved through the Copyright Act, because the nature and ownership of traditional works are so different from literary, artistic and musical works that they should be protected by a unique, *sui generis*, piece of legislation. Other stakeholders argued that indigenous knowledge is part of the public domain and restricting use of it frustrates knowledge production because creators need a public domain to draw from when creating new works.

Despite these submissions, the DTI steamrolled ahead and had planned for the draft amendments to be presented before

Parliament during the Mbeki presidency. Fortunately enough, stakeholders in copyright circles managed to derail this process by taking the draft Bill to the National Economic Development and Labour Council (NEDLAC), which provides a forum where legislation with socio-economic effects can be discussed by government, business and labour before it goes to Parliament. The main aim was to streamline differences and achieve some form of consensus with regard to the draft legislation. During this process, technical amendments were made to the draft Bill, to assist in tidying up its impractical aspects; this involved defining some of the key words. But at this point, ANFASA pulled out of the NEDLAC process because our concerns were less about "business" than about how the proposed legislation would affect authorship and especially authors creating new works drawing on traditional forms. Thus, we chose not to get involved in the re-drafting of the legislation, which would still not resolve its inherent flaws.

Another interruption, after the NEDLAC process, was the Regulatory Impact Assessment (RIA). This is a policing mechanism, commissioned by the office of the Presidency to ensure that proposed legislation is not detrimental from a cost analysis point. When ANFASA met the company responsible for carrying out this assessment we emphasised our support for the underlying principles of the legislation and our concern that its inherent flaws will certainly cause more harm than good. We argued for *sui generis* legislation.



After the assessment was completed a report was handed over to the office of the Presidency. Its contents have not been made available to the public.

The latest development is that the draft legislation has been presented to the Parliamentary Portfolio Committee for Trade and Industry (PPC). ANFASA, supported by indigenous language authors' associations, made its submission to Parliament: "we support the legal recognition and protection of IKS but this must be achieved in terms of *sui generis* legislation". On 19 May, the DTI made its presentation to the PPC. It was striking that the Bill was still in its original form – none of the changes from the NEDLAC process were incorporated, despite all the parties to the process having signed the document. During its presentation, the DTI emphasised the underlying importance of giving legal recognition and protection to IKS but avoided discussing the practicability of the substantive provisions in its draft legislation.

The PPC posed questions to the DTI like: Who makes up the indigenous community? How will they be identified? How are the examples of Tunisia and Samoa relevant to South Africa and how does New Zealand ensure that all the scattered members of the Maori community benefit from IKS? And how does the DTI plan to ensure that all the relevant South African indigenous communities will benefit? There was a feeling from the PPC members that the Bill could assist in protecting South African artists (e.g Lady Blacksmith Mambazo) from exploitation by international corporations. But there was also a concern that the Bill should not lead to "inter-tribal" conflicts. In the DTI's evasive responses there was a lot of emphasis on patents and trademarks, based on an assumption that what relates to patents and trademarks would also apply to copyright. The chairman of the PPC, indicated that there were numerous technical issues they had to get to grips with before they could properly consider the Bill. Therefore, there will be workshops to assist them to understand intellectual property before the stakeholders make oral submissions later on this month.

Let's hope this process will provide Parliament with a better understanding of the flawed drafting process. We look forward to the next stage. [VIEW THE ANFASA SUBMISSION HERE](#)

IZINDABA ZABABHALI, the ANFASA newsletter carries items of interest to the members, but it also depends on the members to make it a lively and stimulating publication. Members are encouraged to send their contributions, whether serious or humorous, contemplative or controversial.

The editors reserve the right to shorten contributions, if necessary.

Opinions expressed here are not necessarily those of the editors or of ANFASA

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ACADEMIC AND NON - FICTION AUTHORS' ASSOCIATION OF SOUTH AFRICA



Unequal Peers: The Politics of Discourse Management in the Social Sciences

by Dr Mpilo Pearl Sithole

Review by Janet Smith

The idea of Africanness being endemic to all South Africans has liberated us and dogged us. It has pulled us together and pulled us apart. Yet the overarching quality of the World Cup has been that very sense of unity. Or, apparent unity. Visitors, journalists, analysts and ordinary fans who discovered the mad beauty of the one-blast-fits-all vuvuzela commented on it. They seemed surprised. But now, as we step away from the event which reenergised us, and contemplate its effects, academics may give us some guidance in understanding it better. They know comparisons. They know contrast. They mostly search to interpret how one thing affects another. Their job is to set ideas up against each other to see what lies inside and Africanness, or ubuntu, is often the basis for a rampaging discourse - no matter how many times we may feel we have engaged with it before. The thing that makes it unendingly useful as an intellectual tool is that it seeks comparisons with Western values and intellectual hegemonies. And ubuntu and the nature of Africanness and how it may fit into or argue with other systems is one of the most interesting aspects of *Unequal Peers: The Politics of Discourse Management in the Social Sciences* by senior research HRSC specialist Dr Mpilo Pearl Sithole.

Dr Sithole's poses provocative questions about the most controversial comparison in the academic world - peer review. She calls upon fascinating African ideas and intellectual maestros, her own and herself included. She finds that its practice in South Africa, which uses models that do not always fit, needs profound review. A highly-respected researcher into what is properly known as "knowledge production", Dr Sithole is

used to annoying her detractors and speaking, apparently, out of turn. She is also comfortable with confronting positions that have been held for too long. It is not about conflict, but about stirring up so that it is possible to move closer to where we need to be in order to develop more widely applicable peer review mechanisms for our own situation.

Dr Sithole makes use of a premise that would be clever even in fiction. She publishes three of her own articles which were previously rejected by academic journals. She wonders why. She asks why. As readers, we are privy to the views of those who didn't use what she had to say. The dynamic is rich in that the correspondence and the comments are provided, making for strong comparisons with Dr Sithole's own position. Standards are laid bare for reflection, as is the painful art of not taking things personally. Anonymity can be a double-bind, knowing that not all academics who act as reviewers are as expert as they may have given themselves to be. So honesty is safer behind a shield, but are the views then as important?

Dr Sithole encourages us to wonder how much of what we do see published in academic journals is more about elitism. At the same time, however, she is not eternally opposed. She just puts forth that the notion of competition and rivalry - which has always been an issue in peer review - needs to be more closely examined. It is indeed far more political than we think.

