CONSTITUTION OF RECREATE ACTION

INDEX

Clause Heading

1. BACKGROUND

The mission of ReCreate Action is to protect and promote the rights of people in South Africa affected by copyright reform, including creators and users of copyrighted materials such as teachers, learners, researchers, journalists, creatives, performers, activists and many others.

ReCreate Action is particularly focused on the right to education, the right to freedom of expression and the rights which allow creatives in South Africa to participate in the economy.

2. NAME

The name of the Association is ReCreate Action (hereafter referred to as the "Association").

3. OBJECTIVES

3.1 The Association is a public, non-profit organisation established for the following overarching objectives:

a. **To protect and promote the right to access to education**
b. **To protect and promote the right to freedom of expression**
c. **To protect and promote the rights of creators of copyright material**
d. **To promote a balanced approach to copyright, which supports access to knowledge**

The Association directs these aims to primary areas of action:

3.2 The Association exists to defend the interests of hundreds of thousands of people making up it's member organisations.

3.3 It draws on ten years of experience and expertise of ReCreate South Africa in promoting copyright reform through activism, legal research and opinions, parliamentary submissions, global research and networking.

4. LEGAL STATUS

The Association is a body corporate with its own legal identity which is separate from its individual members. The Association shall continue to exist even if the members change. The Association may own property, enter into contracts, and sue or be sued in its own name.

5. NON-PROFIT DISTRIBUTING CHARACTER

5.1 The income and property of the Association shall be used solely for the promotion of its stated objectives. The members and the office-bearers shall have no rights to the property or other assets of the Association solely by virtue of them being members or office-bearers. No portion of the income or property of the Association shall be paid or distributed directly or indirectly to any person (otherwise than in the ordinary course of undertaking any public benefit activity) or to any member of the Association or Management Committee, except as:

5.1.1 reasonable compensation for services actually rendered to the Association;

5.1.2 reimbursement of actual costs or expenses reasonably incurred on behalf of the Association.

5.2 Upon the dissolution of the Association, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to some other non-profit organisation which the Management Committee (and failing which any division of the High Court) considers appropriate and which has objectives the same or similar to the objectives of the Association; and should the Association become an approved public benefit organisation:

5.2.1 is a similar public benefit organisation which has been approved in terms of section 30 of the Income Tax Act, or

5.2.2 any institution, board or body which is exempt from tax under the provisions of section 10(1)(*c*A), which has as its sole or principal object the carrying on of any public benefit activity, or

5.2.3 any department of state or administration in the national or provincial or local sphere of government of the Republic contemplated in section 10(1)(a) or (b).

5.3 The Association may elect to apply to the Commissioner for the South African Revenue Service exemption from appropriate taxes and duties. In compliance with the provisions of the Income Tax Act, the provisions set out in the attached Schedule A shall bind the Association and qualify this Constitution.

6. POWERS

The Association, acting through its Management Committee, or at General Meeting, shall have all the powers necessary for it to carry out its stated objectives effectively. Such powers shall include, but not be limited to, the General Investment and Administrative Powers set out in the attached Schedule B.

7. MEMBERS

7.1 The initial membership shall be those persons whose names and signatures appear on the attached Schedule C.

7.2 The Management Committee may admit further members from time to time:

7.2.1 Subject to due compliance with any conditions of membership which the Management Committee may stipulate from time to time; and

7.2.2 In accordance with the following criteria:

Voting members means members who are permitted to vote on decision of the Association at ordinary meetings and at the Annual General Meeting.

Non-voting members will not have the right to vote on decisions relating to the management of the Association whatsoever. Non-voting members may be natural and juristic persons who request membership status from the Management Committee.

Voting members shall be individuals who are members of the Management Committee. Non-voting members shall be any and all employees of the Association.

7.3 The Management Committee may suspend or terminate the membership of any member provided that:

7.3.1 At least (14) fourteen days prior written notice is given to all members of the Management Committee of the intention to terminate a membership; and

7.3.2 At least (14) fourteen days prior written notice is given to the member concerned. The notice shall invite the member to make written or verbal representations to the meeting as the member may consider appropriate.

7.4 The decision of the Management Committee to admit an applicant to membership, or to suspend or terminate a membership shall lapse unless confirmed by a resolution of two thirds of the members of the Association present at the next General Meeting.

8. STRUCTURE OF THE ASSOCIATION

8.1 The Management Committee

8.1.1 <u>Powers</u>

8.1.1.1 The affairs of the Association shall be controlled and managed by the Management Committee.

8.1.1.2 Management Committee members shall be members of the Association.

8.1.2 Composition

8.1.2.1 The Management Committee shall comprise at least three (3) but not more than seven (7) members. The membership of the Management Committee shall comprise at least:

8.1.2.1.1 the Chairperson;

8.1.2.1.2 the Treasurer;

8.1.2.1.3 the Secretary;

8.1.2.2 The Management Committee may co-opt up to ten (10) additional non-voting members as it may consider appropriate from time to time to conduct work on behalf of the Management committee. The co-opted members shall serve for such period as the Management Committee considers appropriate.

8.1.3 Management Committee Member Vacating Office

8.1.3.1 The office of a Management Committee member shall be vacated if a member:

8.1.3.1.1 resigns; or

8.1.3.1.2 becomes unfit and/or incapable of acting as such;

or

8.1.3.1.3 would be disqualified, in terms of the Companies Act or equivalent legislation in force from time to time, from acting as a Director of a Company;

or

8.1.3.1.4 is removed by the Management Committee, by resolution adopted by at least two-thirds (2/3) of its members in office from time to time, being not less than the required minimum of two-thirds (2/3). The Management Committee shall not be obliged to furnish reasons for its decision/s regarding removal except to the member removed and to the members of the Association in General Meeting.

8.1.3.2 Should a position on the Management Committee fall vacant, the Management Committee, by resolution adopted at least two-thirds (2/3) of its members, may (and if the vacancy reduces the number of members to less than two [2], shall) co-opt a member/s to fill the vacancy/ies, temporarily. The office of any person so co-opted as member of the Management Committee shall lapse unless confirmed by resolution of members at the next General Meeting.

8.1.4 <u>Procedure at Management Committee Meetings</u>

8.1.4.1 The Management Committee shall conduct its meetings and regulate its proceedings as it finds convenient, provided that:

8.1.4.1.1 The Chairperson, or in their absence, the Vice-Chairperson, shall chair all meetings of the Management Committee which they attend. In the absence of the Chairperson and the Vice-Chairperson, the remaining members of the Management Committee shall elect a chairperson from those attending.

8.1.4.1.2 The Chairperson shall convene a meeting of the Management Committee, quarterly and at the written request of any two (2) members of the Management Committee and may convene such a meeting at any other time.

8.1.4.1.3 The quorum necessary for the transaction of any business by the Management Committee shall be two-thirds (2/3) of the Management Committee members serving at any given time.

8.1.4.1.4 At meetings of the Management Committee each member shall have one (1) vote.

8.1.4.1.5 Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

8.1.4.1.6 Proper minutes shall be kept of the proceedings of the Management Committee, and a record of the persons present at each meeting. The minutes shall be signed by the member who chairs the meeting, and shall be available at all times for inspection or copying by any member of the Management Committee, and on two (2) days' notice to the Secretary or his or her deputy, by any member of the Association.

8.1.6.1.7 A resolution signed by all members of the Management Committee shall be as valid as if passed at a duly convened meeting of the Management Committee.

8.1.7 The Management Committee may delegate any of its powers to any of its members, or to a special purpose committee. The member, committee, employee or agent to whom such delegation is made shall conform to any regulations and procedures that may be stipulated by the Management Committee from time to time.

8.1.8 The Management Committee may appoint a Chief Executive and other officers and employees as it may consider necessary from time to time upon such terms and conditions as it may consider appropriate.

8.2 General Meetings

8.2.1 Annual General Meeting

8.2.1.1 An Annual General Meeting of the Association shall be held within a period of fifteen (15) months of the adoption of this Constitution. Subsequent Annual General Meetings shall be held within three (3) months of the end of each financial year.

8.2.1.2 Annual General Meetings shall be convened by the Chairperson on not less than twenty-one (21) days prior written notice to all members entitled to attend the meeting. This notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting.

8.2.1.3 The business of an Annual General Meeting shall include:

8.2.1.3.1 the presentation and adoption of the Annual Report of the Chairperson;

8.2.1.3.2 the consideration of the Annual Financial Statements;

8.2.1.3.3 the appointment of Auditors or Accounting Officer;

8.2.1.3.4 other matters as may be considered appropriate.

8.2.2 Other General Meetings

8.2.2.1 Other General Meetings of the Association shall be convened at any time by the Chairperson or at the written request of:

8.2.2.1.1 the Management Committee;

8.2.2.1.2 the lesser of one quarter (1/4) or <u>three (3)</u> of the members of the Association.

8.2.2.2 Any General Meeting other than the Annual General Meeting shall be convened on not less than fourteen (14) days written notice to all members. The notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting, provided that: should the Chairperson, having been requested to give such notice, fail to give it within seven (7) days of the request, the persons requesting the meeting shall be entitled themselves to give notice of and to convene the meeting.

8.2.3 <u>Quorum</u>

8.2.3.1 A quorum constituting a General Meeting of the Association shall be the lesser of:

8.2.3.1.1 three (3) members; or

8.2.3.1.2 one quarter (1/4) of the members.

8.2.3.2 Should any General Meeting have been properly convened but no quorum be present, the meeting shall stand adjourned to another date, which shall be within seven (7) days thereafter. The notice reflecting such adjournment shall be given to the persons and in the manner provided for in this Constitution. At such reconvened General Meeting, the members then present or represented shall be deemed to constitute a quorum.

8.2.4 <u>Resolutions and Voting</u>

8.2.4.1 At all General Meetings, a resolution put to the vote shall be decided by means of a show of hands or by ballot of voting members. A vote by ballot shall be held only if demanded by the Chairperson or not less than one third (1/3) of the persons voting in person or by proxy. The result of the vote shall be the resolution of the meeting.

8.2.4.2 Each voting member present or represented at such meeting shall be entitled to one (1) vote.

8.2.4.3 Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

8.2.5 <u>Minutes</u>

Proper minutes shall be kept of the proceedings of all General Meetings, and a record of the persons present at each meeting. The minutes shall be signed by the chairperson of the meeting, and shall be available for inspection or copying by any member on two (2) days notice to the Secretary or his or her deputy.

8.2.6 Powers

Subject to the provisions of Clause 8.1.1.2 above, a duly convened General Meeting of the Association, at which a quorum is present, is competent to carry out all the objectives and to exercise all the powers of the Association as set out in this Constitution.

8.3 Notices

8.3.1 Notice of all meetings provided for in this Constitution, shall be delivered personally, or sent by prepaid post, to the last address notified by each person concerned to the Association, or in any other manner as the Management Committee may decide from time to time.

8.3.2 The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.

8.3.3 If posted, notices shall be deemed to have been received seven (7) days after posting.

9. FINANCIAL MANAGEMENT

9.1 Bank Account

The Management Committee must open a bank account should it choose to accept donations. Should the Management Committee accept donation is must open a bank account in the name of the Association with a registered Bank or Building Society. The Management Committee shall ensure that all monies received by the Association are deposited in the above mentioned bank account as soon as possible after receipt.

9.2 Signatures

All cheques, promissory notes and other documents requiring signature on behalf of the Association shall be signed by two (2) of the Management Committee members.

9.3 Financial Year End

The Association's financial year-end shall be: End March

9.4 Financial Records

The Management Committee shall ensure that the Association keeps proper records and books of account which fairly reflect the affairs of the Association.

9.5 Annual Narrative Report and Financial Statements

9.5.1 The Management Committee shall ensure that the Association prepares an Annual Narrative Report describing the Association's activities and an Annual Financial Statement for each financial year. The Annual Financial Statements shall conform to generally accepted accounting principles and shall include a statement of income and expenditure and a balance sheet of assets and liabilities.

9.5.2 Within two (2) months after drawing up the Annual Financial Statements, the Management Committee shall ensure that the Association arranges for an accounting officer to certify that the annual financial statements are consistent with the financial records of the Association and that its accounting policies are appropriate and have been appropriately applied in the preparation of its financial statements.

9.5.3 A copy of the Annual Financial Statements and Annual Narrative Report shall be made available to all members as soon as possible after the close of the financial year.

10. AMENDMENTS TO THE CONSTITUTION AND DISSOLUTION

The terms of this Constitution may be amended, the name of the Association may be changed and the Association may be dissolved by resolution of sixty six per cent (66%) of the voting members present at a General Meeting: provided that proper notice of the meeting is given not less than twenty-eight (28) days prior to the date of the Meeting and such notice states the nature of the resolution to be proposed.

11. INDEMNITY

11.1 Subject to the provisions of any relevant statute, members of the Management Committee and other office bearers shall be indemnified by the Association for all acts done by them in good faith on its behalf. It shall be the duty of the Association to pay all costs and expenses which any such person incurs or becomes liable for as a result of any contract entered into, or act done by him or her, in his or her said capacity, in the discharge, in good faith, of his or her duties on behalf of the Association.

11.2 Subject to the provisions of any relevant statute, no member of the Management Committee and or other office bearer of the Association shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Association, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

12. DISPUTES

12.1 In the event of a serious disagreement between the members of the Management Committee and/or the Association regarding the interpretation of this constitution then any two (2) Management Committee members shall be entitled to declare a dispute. Such declaration shall be in writing, state the issue in dispute, and be addressed to the Management Committee.

12.2 The Management Committee shall consider such declaration within two (2) weeks of receiving it. Should the Management Committee not be able to resolve the dispute to the satisfaction of the person(s) declaring it, the dispute shall be referred either to a mediator or arbitrator.

12.3 Should the dispute be referred to a mediator, the person(s) declaring the dispute and the Management Committee must agree on a suitable mediator and to the costs of such mediation. A mediator may recommend an appropriate resolution of the dispute.

12.4 In the absence of agreement regarding a mediator or should mediation not resolve the dispute, the dispute shall be referred to arbitration. The arbitrator shall be such suitably qualified person/s as the person(s) declaring the dispute and the Management Committee may mutually agree. Alternatively, each of the parties shall be entitled to nominate one arbitrator, who shall act jointly with a third person to be nominated jointly by the respective nominees of the parties; on the basis that a majority decision of the appointed arbitrators shall be final and binding.

12.5 The arbitration shall be held on an informal basis, and the arbitrator shall have the power to determine the procedure to be adopted subject to principles of natural justice.

12.6 The arbitrator may base her/his award not only upon the applicable law but also upon the principles of equity and fairness.

12.7 The person(s) declaring the dispute and the Management Committee, beforehand, may agree to share the costs of the arbitration. In the absence of such agreement the arbitrator shall decide which parties shall be liable for the costs.

12.8 The decision of the arbitrator shall be final and binding upon all parties and capable of being made an Order of Court on application by any of them.

SIGNED ON 22 April 2021.

Tusi Matshama Nthabiseng Fokane	
Douglas Ian Scott	
Himal Bhushan Devnarain	
Benjamin Charles Cashdan	
Unathi Noxolo Ndiki	

Witness: Simone Hammersley

Witness: Kudakwashe Tatenda Jani

SCHEDULE A

REQUIREMENTS OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE FOR EXEMPTION FROM TAXES AND DUTIES

As provided for in Clause 5.3 of this Constitution, the Association may apply to the Receiver of Revenue for the exemption from appropriate taxes and duties. In compliance with the anticipated requirements of the Commissioner in respect of such exemptions, the following provisions shall bind the Association:

1. ***In the case of a PBO seeking an exemption from income and other related taxes only, in terms of section 10(1)(cN) of the Income Tax Act, as amended:***

   Carry out all its public benefit activities (or substantially the whole thereof) in the Republic, unless the Minister of Finance ("the Minister"), having regard to the circumstances of the case, directs otherwise. While also, ensuring that the public benefit activity is carried out for the benefit of, or is widely available to the general public at large.

   Or

   In the case of a PBO seeking a section 10(1)(cN) exemption from income and other related taxes and donor deductible status in terms of sections 10(1)(cN) and 18A, respectively, of the Income Tax Act, as amended:

   Carry on its public benefit activities in the Republic and ensure that the public benefit activity is carried out for the benefit of, or is widely available to the general public at large.

2. ***Only in the case of a <u>PBO which provides funds solely to any income tax exempt PBO</u> seeking a section 10(1)(cN) exemption from income and other related taxes only and section 18A donor deductible status, as described in section 18A(1)(b) of the Income Tax Act, as amended.***

   Within 12 months following the year of assessment during which the donation is received, distribute or incur the obligation to so distribute at least 50% of the funds received in respect of which receipts were issued. Provided that the Commissioner may on good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute at least 50% of its funds having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds.

3. Carry on its public benefit activities in a non-profit manner and with an altruistic or philanthropic intent.

   No activity carried out by the Association will be intended to directly or indirectly promote the economic self-interest of any member or employee of the organisation, otherwise than by way of reasonable remuneration payable to that member or employee.

4. Comply with such conditions, if any, as the Minister may prescribe by way of regulation to ensure that the activities and resources of the organisation are directed in the furtherance of its objects.

5. Submit to the Commissioner a copy of, and a copy of any amendment to the Constitution, Will or other written instrument under which it has been established.

6. Be required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the organisation and no other single person directly or indirectly controls the decision making powers relating to that organisation: Provided that the provisions of this sub-paragraph shall not apply in respect of any trust established in terms of a will of any person who died on or before 31 December 2003.

7. In the event of the Association investing funds, invest such funds :

   7.1 with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); and/or

   7.2 in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) ; and/or

   7.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations;

   Provided that the provisions of this sub-paragraph do not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance

8. Be prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that:

8.1 the gross income derived from such business undertaking or trading activity does not exceed the greater of :

8.1.1 five percent (5%) of the total receipts and accruals of such public benefit organization during the year of assessment; or

8.1.2 two hundred thousand Rand (R200 000,00);

8.2 the undertaking or activity is:

8.2.1 integral and directly related to the sole object of such public benefit organisation; and

8.2.2 carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost, and which would not result in unfair competition in relation to taxable entities;

8.3 the undertaking or activity, if not integral and directly related to the sole object of such public benefit organisation as contemplated in clause 8.2.1, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or

8.4 the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to:

8.4.1 the scope and benevolent nature of the undertaking or activity;

8.4.2 the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;

8.4.3 the profitability of the undertaking or activity; and

8.4.4 the level of economic distortion that may be caused by the tax-exempt status of the public benefit organisation carrying out the undertaking or activity.

9. Be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in

terms of section 18A; provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i), which has as its sole or principal object the carrying on or any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

10. Ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.

11. Has not and will not pay any remuneration as defined in the Fourth Schedule, to any employee, office bearer, member or other person, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects.

12. Comply with such reporting requirements as may be determined by the Commissioner.

13. Take reasonable steps to ensure that the funds which it may provide to any association of persons are utilised for the purpose for which they are provided.

14. Become registered in terms of section 13(5) of the Non-Profit Organisations Act, 1997 (Act No. 71 of 1997), within such period as the Commissioner may determine, and comply with any other requirements imposed in terms of that Act, unless the Commissioner in consultation with the Director or Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997, on good cause shown, otherwise directs.

15. Has not and will not use its resources directly or indirectly to support, advance or oppose any political party.

16. Ensure that any books of account, records or other documents relating to its affairs are:

    16.1 where kept in book form, retained and carefully preserved by any person in control of the organisation, for a period of at least four years after the date of the last entry in any such book; or

16.2 where not kept in book form, are retained and carefully preserved by any person in control of the organisation, for a period of four years after the completion of the transaction, act or operation to which they relate.

SCHEDULE B

GENERAL ADMINISTRATIVE AND INVESTMENT POWERS

1. To employ staff and hire professional and other services.

2. To institute or defend any legal or arbitration proceedings and to settle any claims made by or against the Association.

3. To open and operate accounts with registered banks and building societies.

4. To make and vary investments and re-invest the proceeds of such investments on condition that any investments made by the Association shall be with Financial Institutions as defined in Schedule A Clause 7 above.

5. To accept donations made to the Association and retain them in the form in which they are received, or sell them and re-invest the proceeds.

6. With regard to movable and immovable property and tangible and intangible assets of whatsoever nature:

   6.1 to purchase or acquire property and assets;

   6.2 to maintain, manage, develop, exchange, lease, sell, or in any way deal with the property and assets of the Association;

   6.3 to donate and transfer the property and assets of the Association to organisations with the same or similar objectives and the same exemptions from taxes and duties to those of the Association.

7. To borrow and to use the property or assets of the Association as security for borrowing;

8. To guarantee the performance of contracts or obligations of any person on condition that any such person is primarily engaged in activities which further the objectives of the Association.

9. To execute any act or deed in any deeds registry, mining titles or other public office.

10. To work in collaboration with other organisations and to amalgamate with any organisation with the same or similar objectives and the same exemptions from taxes and duties to those of the Association.

11. To exercise all the management and executive powers that are normally vested in the Board of Directors of a Company.

12. To exercise all the powers and authority of the Association not only in the Republic of South Africa but in any other part of the world.

SCHEDULE C

SCHEDULE OF INITIAL MEMBERS

Name	**Address**	**Date**	**Signature**
Tusi Matshama Nthabiseng Fokane	166 Cooperville AH, Midvaal Municipality, 1949	22 April 2021	
Douglas Ian Scott,	10 Sheerness Road, Kenilworth, Cape Town, 7701	22 April 2021	
Himal Bhushan Devnarain	357 Cork Ave Ferndale, 2194	22 April 2021	
Benjamin Charles Cashdan	63 Craighall Road, Victory Park 2195	22 April 2021	
Unathi Noxolo Ndiki	48 Nelson Street Vasco estates, Goodwood 7460	22 April 2021	