



**THE PRESIDENCY**

**REPUBLIC OF SOUTH AFRICA**

**DEPARTMENT OF PLANNING, MONITORING AND EVALUATION**

**SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)**

**FINAL IMPACT ASSESSMENT TEMPLATE (PHASE 2)**

**COPYRIGHT AMENDMENT BILL**

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# **1 BACKGROUND**

## **1.1 Introduction**

The Socio-Economic Impact Assessment System (SEIAS) was adopted by Cabinet in February 2015 and introduced for implementation by government departments in July 2015. The SEIAS aims to improve policy and legislative processes so as to reduce the cost and optimise the benefits of regulation. The SEIAS also ensures that policy and legislation are aligned to government's national priorities such as inclusive economic growth, employment creation, social cohesion, etc. The risks associated with the implementation of the policy or legislative proposals are also a key feature in the SEIAS process.

The SEIAS is undertaken in two phases, wherein phase 1 is referred to as the initial impact assessment and is about problem identification, analysis of the possible options for addressing the problem and adoption of the most preferred option or intervention. Phase 2 is considered to be the final impact assessment and it provides details of the proposed intervention in terms of impact and risks likely to result from implementation, dispute resolution mechanisms, consultation and monitoring and evaluation.

This report is the final impact assessment in terms of the SEIAS process, undertaken on the Copyright legislative review process.

## **1.2 Policy review**

The current policy revision is based on the need to bring the Copyright legislation in line with the digital era and developments at a multilateral level. The policy revision is based on the Draft National Policy on Intellectual Property (IP Policy) as commented on, the recommendations of the Copyright Review Commission (CRC) as chaired by retired judge Ian Farlam and it is linked to the National Development Plan (NDP) in that it seeks to ensure consistency and coherence in aligning the approach of various Government Departments to Intellectual Property (IP) matters.

The challenges identified are a result of the current Act being out-dated. The Act does not have any provisions which deal with digital issues. Furthermore, the practical problems experienced by educators, researchers, and libraries under the current law calls for a revision

which enhances access to and use of copyright works and to enhance access to information for the advancement of education and research.

## 2 PROBLEM STATEMENT / THEORY OF CHANGE

**the dti** as a custodian of IP has the responsibility to ensure that IP legislation remains updated in view of the ever evolving digital space and that the current legislation does not limit access to education. Information and resources needs to be made available for persons with disabilities, and that authors and artists do not die as paupers due to ineffective protection.

The universal purpose of Copyright is to reward and incentivise creators of knowledge and art. The existing legislation is out-dated and has not been effective in a number of areas that impact upon educators, researchers, people with disabilities in terms of access to copyright works.

Favourable provisions of international treaties in the area of copyright have not been incorporated into the copyright legislation in order to enhance access to education and knowledge. There is a need to provide exceptions and flexibilities to allow third parties to gain access to copyright works for education and personal use.

The current Copyright Tribunal is not effective in that there are delays in settling disputes as the whole process is entirely dealt with by Judges of the High Court. This dispute resolution mechanism is thus reviewed.

Education and awareness programs are to be addressed in order to develop and support the growth of the creative industry and to encourage South Africans to be creators of copyright works.

Problems	Root Causes
Challenges on non-payment of royalties.	<ul style="list-style-type: none"><li>• Lack of contractual agreements between producers and authors/ owners.</li><li>• Lack of proper regulation on the collection and distribution of royalties.</li><li>• Fragmented and unstructured management of copyright works.</li><li>• No clear provision for the payment of royalties where the work of the authors is reused.</li></ul>

<b>Problems</b>	<b>Root Causes</b>
Limited access to copyrights works for fair dealings and use.	<ul style="list-style-type: none"> <li>No provision for works to be made available for fair dealings and use.</li> </ul>
Inadequate protection of copyright authors/ owners.	<ul style="list-style-type: none"> <li>Inadequate provision of what constitutes an infringement of copyright in areas such as technological protection measures and copyright management information.</li> </ul>
Lack of access to orphan works that limits the use of such copyright works	No provision for the exploitation of orphan works.
Lengthy and costly dispute resolution processes	The current legislation provides for a High Court judge to be the Copyright Tribunal, and disputes can only be resolved through the court process.

### 3 INTENDED OUTCOMES OF THE PROPOSED AMENDMENTS

The current copyright legislative review aims to achieve the following outcomes:

- Improved access and use of copyright works.
- Improved welfare and economic opportunities for copyright owners.
- Improved access to dispute resolution mechanisms.

### 4 DESIGNATED GROUPS AND THE BENEFITS

<b>Groups that will benefit</b>	<b>How will they benefit?</b>
The State	Revenue generation through the collection of royalties
The public	<ul style="list-style-type: none"> <li>Improved access to copyright works for the following – fair dealings and use, use of orphan works.</li> <li>Efficient dispute resolution by the Tribunal.</li> </ul>
Authors/ creators of copyright works.	<ul style="list-style-type: none"> <li>Payment of royalties for copyright works.</li> <li>Royalties from the reuse of the created works.</li> <li>Improved management and distribution of royalties.</li> <li>Improved protection of copyright works.</li> <li>Improved protection through the prescription of minimum contractual terms.</li> </ul>
Collecting Societies	<ul style="list-style-type: none"> <li>Administration of authors/ owners' rights and royalties.</li> </ul>

<b>Groups that will bear the cost</b>	<b>How will they bear the cost?</b>
The State	<ul style="list-style-type: none"> <li>• The costs of registering the copyright.</li> <li>• Establishment of the Tribunal.</li> <li>• Law enforcement institutions for monitoring compliance and dealing with infringements.</li> </ul>
Companies and Intellectual Property Commission (CIPC)	<ul style="list-style-type: none"> <li>• Management of Collecting Societies.</li> <li>• Administration of licensing of orphan works.</li> </ul>
Copyright authors/ owners	<ul style="list-style-type: none"> <li>• Contractual arrangements.</li> </ul>
Publishers Producers	<ul style="list-style-type: none"> <li>• Making accessible copyright works for fair use purposes.</li> <li>• Contractual agreements for the sharing of royalties.</li> <li>• Payment of royalties for the reuse of copyright works.</li> </ul>
The public/ users of copyright works	<ul style="list-style-type: none"> <li>• Application for use of copyright works.</li> <li>• Undertake the required search before any copyright work could be regarded as orphan work.</li> <li>• Payment of royalties for reuse of copyright works.</li> </ul>

## 5 BEHAVIOUR AND MECHANISMS FOR CHANGE

<b>Groups inside government whose behaviour will have to change</b>	<b>Behaviour that must be changed</b>	<b>Main mechanisms to achieve the necessary change</b>
The State	Non registration of copyright works funded by the State.	<ul style="list-style-type: none"> <li>• Registration of copyright works</li> </ul>
Law enforcement institutions (SAPS, Courts)	Enforcement of legislation	<ul style="list-style-type: none"> <li>• Systems for collection, storage and presentation of evidence.</li> </ul>
<b>the dti</b>	<ul style="list-style-type: none"> <li>• Limited provision for fair dealings and uses.</li> <li>• Lack of provision to deal to orphan works.</li> <li>• Inadequate protection to authors and creators of works.</li> <li>• Lack of provision for the collective</li> </ul>	<ul style="list-style-type: none"> <li>• Provision for licenses to be obtained for fair dealings and uses.</li> <li>• Provision for licenses to be obtained for the use of orphan works.</li> <li>• Provision to offer more protection to authors and creators of works, e.g. incorporation of digital treaties, payment of royalties for the resale of original works of art, and payment of royalties for the commercial re-use of works.</li> </ul>

<b>Groups inside government whose behaviour will have to change</b>	<b>Behaviour that must be changed</b>	<b>Main mechanisms to achieve the necessary change</b>
	management of copyright works.	<ul style="list-style-type: none"> <li>• Provision for collective management of copyright works.</li> <li>• Training of law enforcement institutions on infringements on copyright works.</li> </ul>
<b>Groups outside government whose behaviour will have to change</b>	<b>Behaviour that must be changed</b>	<b>Main mechanisms to achieve the necessary change</b>
Collecting societies	<ul style="list-style-type: none"> <li>• Collection of royalties for many sets of rights.</li> <li>• Non distribution of royalties.</li> </ul>	<ul style="list-style-type: none"> <li>• Provision for one collecting society per one set of rights.</li> <li>• Provision for the management of collecting societies.</li> </ul>
Authors	<ul style="list-style-type: none"> <li>• Limited access for copyright works for fair dealings and uses.</li> </ul>	<ul style="list-style-type: none"> <li>• Comply with the provisions on fair dealings and uses.</li> </ul>
Publishers, and Producers	<ul style="list-style-type: none"> <li>• Limited access for copyright works for fair dealings and uses.</li> <li>• Non-payment of royalties.</li> </ul>	<ul style="list-style-type: none"> <li>• Comply with the provisions on fair dealings and uses.</li> <li>• Provision for royalties to be paid through contractual arrangements.</li> </ul>
Copyright owners	Exclusive rights that impede learning and development.	Incorporation of provisions to provide for access to protected works for educational and research purposes.
Users of copyright works	<ul style="list-style-type: none"> <li>• Non-payment of royalties.</li> <li>• Infringement of copyrights.</li> </ul>	<ul style="list-style-type: none"> <li>• Application for licenses.</li> <li>• Payment of royalties.</li> <li>• Compliance with the provisions on infringements in the legislation.</li> </ul>

## 6 CONSULTATIONS

Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have these amendments been incorporated in your proposal
Department of Arts and Culture	Creators of works of art will be rewarded for the continuous use of their works through the provision for royalties to be paid for the resale of art works.	They support the proposal	None	Not applicable
Ministry of Women	The incorporation of the provisions of the Marrakesh treaty would afford persons with disabilities access to educational materials.	They support the proposal.	None	Not applicable
Academics and Libraries	The provision for 'fair use' of copyright works will offer access to educational materials and enhance learning and research.	They support the proposal.	None	Not applicable
Authors and Publishers	The 'fair use' provision should be implemented with proper control measures to avoid abuse of the provision.	They do not support the 'fair use' provision in current form.	None	Provision for what constitutes 'fair use' will be made clear.
Photographers and creators of works of art	Section 21 (1) (b) – (d) of the copyright legislation under the heading of ownership of copyright unfairly and prejudicially discriminates against photographers' work with little or no financial reward to photographers.	They oppose the fact that section 21 has not been amended to offer rights to creators of works where such work has been commissioned.	The copyright legislation should protect creators of literary and artistic works working in employment.	The proposal is still under consideration.
Copyright owners	The collective management of copyright will facilitate royalty payments to copyright owners.	They support the proposal	None	Not applicable



Affected stakeholders	What do they see as main benefits, costs and risks	Do they support or oppose the proposal	What amendments do they propose	Have these amendments been incorporated in your proposal
Collecting societies	The regulation of the collective management of copyright will ensure standardization of practices among collecting societies.	They support the proposal	None	Not applicable

## 7 IMPACT ASSESSMENT

### 7.1 Implementation costs and benefits

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
<p><b>Proposal 1:</b> (a) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by, funded by or under the direction or control of the state or an international or local organisations.</p> <p>(b) Copyright conferred in terms of paragraph (a) shall be owned by the state or organisation in question.</p>				
<p>The State</p> <p>The public</p> <p><b>the dti</b></p> <p>CIPC</p> <p>International or local organisations</p>	None	<p>Education and awareness of the public and organisations by <b>the dti</b> and CIPC so that they are aware of the new provisions on the work funded by the State or the organisations in question.</p> <p>The State and organisations will incur costs for registration of copyright with the CIPC.</p>	<p>The State and organisations would generate revenue through royalties paid on the use of their work.</p>	<p><b>the dti</b> through regulations should make provision for the state institutions that would need to register copyright on the work they have authored. The State will need to determine what work can be registered for copyright.</p> <p>Copyright owned by the State needs to be on works commissioned by the State and undertaken for the State.</p> <p>Where the State funds business enterprises or individuals that undertake the work for personal or business purposes, such</p>

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
				work need not be owned by the State as the State would be seen to be competing with those who need the State's financial support to develop their talent, innovation and businesses.
<b>Proposal 2:</b> Notwithstanding the transfer of the copyright work in a literary or musical work; artistic work and cinematograph film or an audiovisual fixation by the user, performer, owner, producer, or author, the user, performer, owner, producer or author, the author of such work shall have the right to claim an equal portion of the royalty payable for the use of such copyright work.				
Copyright authors/ owners <b>the dti</b> CIPC	None	Education and awareness by <b>the dti</b> and CIPC to artists, performers and producers so that they are aware that besides the transfer of copyright, the author of such work still has the right to claim a royalty fee as and when the work is used.  CIPC to monitor compliance.  Costs will be incurred for contractual arrangements	Authors/ owners of copyright work will enjoy continuous benefits form royalty payments even after transfer of their rights.	There would need to be contractual agreements between authors of works and those upon whom the rights are transferred so that the terms and conditions for the transfer are agreed upon.  The legislation needs to clarify what amount of the royalty fee can be claimed by the author after the transfer.

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
		in relation to the payment of royalties after transfer.		
<p><b>Proposal 3:</b> A person who intends to broadcast, cause transmission of or communicate the sound recording to the public by wire or wireless means must, at any time before performing that act, submit a prescribed notice in the prescribed manner to the copyright user, performer, owner, producer, author, collecting society or indigenous community, community trust or National Trust, as the case may be, of his or her intention to perform that act, and must, in that notice-</p> <p>(i) indicate, where practicable, the date of the proposed performance and the proposed terms and conditions for the payment of a royalty; and</p> <p>(ii) request the copyright user, performer, owner, producer, author, collecting society or indigenous community, community trust or National Trust to sign the proposal attached to the notice in question.</p>				
Copyright author Producers The public Broadcasters Sellers of copyright works Collecting Societies IP Tribunal CIPC <b>the dti</b>	None	Broadcasters, producers, the public, and sellers of copyright works would incur costs of submitting notices to the copyright owners and Collecting Societies about their intention to use the copyright work and subsequently paying royalties for the use of the performances.  Education and awareness by the CIPC and <b>the dti</b> for copyright users, performers, owners,	Improved collection of royalties by Collecting Societies and copyright authors.  Improved livelihoods and welfare of copyright authors from payment of royalties.  Improved resolution of disputes over royalty payments.	None

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
Indigenous communities Community trusts National Trusts		<p>producers, authors, collecting societies or indigenous communities, community trusts or National Trusts, broadcasters, the public, about the process to be followed when one intends to make use of copyright works.</p> <p>CIPC to monitor compliance.</p> <p>Copyright users, performers, owners, producers, authors, collecting societies or indigenous community, community trusts or National Trusts will incur administrative costs related to dealing with notices from people interested in broadcasting, transmitting or communicating a sound recording by wire or wireless means.</p>		

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
		The applicants / copyright author / Collecting Society will incur the cost of referring the disputes to the Tribunal.		
<b>Proposal 4:</b> The user, performer, owner, producer, author, collecting society, indigenous community, community trust or National Trust of the copyright who receives payment of a royalty in terms of this section shall share such royalty with any performer whose performance is featured on the sound recording in question and who would have been entitled to receive a royalty in that regard as contemplated in section 5 of the Performers' Protection Act, 1967 (Act No.11 of 1967).				
Author of copyright Copyright owners Performers Producers Collecting Societies Indigenous communities Community trusts National Trusts <b>the dti</b> CIPC	None	Costs for contractual arrangements between authors and owners of copyright works and performers for the equal sharing of royalties where performers' performances feature in sound recordings.  Education and awareness by the CIPC and <b>the dti</b> for all identified groups about the equal sharing of royalties where performers' performances feature in sound recordings.	Performers would benefit in sharing royalties where their performances are featured in other copyright authors' work.	The enforcement of this provision would require that the equal sharing of royalties be documented in the form of a contract.  The equal sharing of royalties, may not always be a justifiable arrangement based on each party's contribution to the production.

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
		CIPC to monitor compliance.		
<b>Proposal 5:</b> Notwithstanding anything to the contrary in this Act, the Trademark Act, 1993 (Act No. 194 of 1993), and the Counterfeit Goods Act, 1997 (Act No. 37 of 1997), the first sale of or other transfer of ownership of a transferred original or copy of a work in the Republic or outside the Republic, shall exhaust the rights of distribution and importation locally and internationally in respect of such transferred original or copy.				
Copyright authors / owners  The public  <b>the dti</b>  CIPC	None	<p>The CIPC will incur costs in the administration of applications for parallel importation.</p> <p>The intended users will incur costs associated with the application for parallel importation.</p> <p>Education and awareness by the CIPC and <b>the dti</b> for copyright authors / owners and the public so that they are aware of the parallel importation provision that states that the rights of distribution and importation by the copyright owner to make available their work locally would be deemed to have been exhausted once</p>	<p>The public and users of copyright works will benefit from parallel importation in that copyright works would be accessible at competitive prices.</p> <p>Improved access to copyright works that were not previously accessible.</p>	The Regulations need to indicate the circumstances under which parallel importation can take place.

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
		they make their work available in other foreign jurisdictions.		
<b>Proposal 6:</b> Notwithstanding the transfer of the copyright in a work, the author shall have the right to claim authorship of the work, subject to the provisions of this Act, and to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author: Provided that an author who authorizes the use of his or her work in a sound recording or cinematograph film or audiovisual fixation an author of a computer program or a work associated with a computer program may not prevent or object to modifications that are absolutely necessary on technical grounds or for the purpose of commercial exploitation of the work.				
Copyright authors The public CIPC <b>the dti</b>	None	<p>The costs of enforcing the moral rights will be embedded in the costs for the application for use of the copyright works.</p> <p>There could be costs incurred by copyright authors of incorporating the moral rights in the copyright management information.</p> <p>Education and awareness by CIPC and <b>the dti</b> to copyright authors and the public on the moral rights of copyright authors.</p>	Improved protection of the moral rights of copyright authors as regards the use of their works.	The moral rights need to be included in the copyright management information, so that every user is aware of such rights.



Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
<b>Proposal 7:</b> Where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of a cinematograph film or audiovisual fixation or the making of a sound recording and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, the ownership of any copyright subsisting in the work shall be governed by contract: Provided that in the absence of valid contract, ownership shall vest in the person commissioning the work and the author of the work shall have a licence to exercise any right which by virtue of this Act would, apart from the licence, be exercisable exclusively by such author.				
Photographers Broadcasters Publishers CIPC <b>the dti</b>	None	Photographers and those commissioning the work of photography (e.g. broadcasters and publishers) would incur costs of entering into contractual agreements.  Education and awareness by CIPC and <b>the dti</b> to copyright authors, producers and the public on the moral rights of copyright authors.  CIPC to monitor compliance.	Photographers may be able to enter into contractual agreements with those commissioning their work where they are in a position to determine the terms and conditions about works that have been authored by them.	The rights of the photographers are not adequately protected because the person commissioning the work may choose not to enter into a contract over the commissioned work, thereby by default still remaining the owners of the work.
<b>Proposal 8:</b> Unless otherwise prohibited from doing so, a licensee may grant a sub-licence for the doing of any act that falls within the terms of the licence, including any implied term, without the consent of the original licensor.				
Copyright authors	None	The sub-licensee will bear the costs of obtaining the licence depending on the	The sub-licensee will benefit from the possibly shortened	The regulations would need to clearly indicate under what circumstances

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
Copyright users <b>the dti</b> CIPC The public		requirements for sub-licensing.  Education and awareness by CIPC and <b>the dti</b> to the public on the provisions for sub-licensing.	licensing process and reduced licensing costs.	sub-licensing may or may not take place and what the requirements will be.
<p><b>Proposal 9:</b> Copyright shall be infringed by any person—</p> <p>(a) not being the owner of the copyright, who, without the licence of such owner, does or causes any other person to do, in the Republic, any act which the owner has the exclusive right to do or to authorise;</p> <p>(b) who tampers with any information kept by any other person in order to administer copyright in terms of this Act;</p> <p>(c) who omits to pay the performer, owner, producer or author of copyright work a royalty fee as and when the copyright work is used;</p> <p>(d) who omits to pay the author of artistic work a royalty fee as prescribed by this Act as and when the artistic work is sold;</p> <p>(e) who misuses copyright and technological protection measures in order to constitute a defence to any claim of copyright liability or any independent cause of action that may be pursued either as a counterclaim in an action for infringement or instituted independently.</p>				
The public  Copyrights users  SAPS (South African Police Services)	None	The SAPS and the courts would need to put in place mechanisms to collect evidence and prove any contravention of the law.	The determination of the stated offences would come with improved protection of the rights of copyright authors / owners, resulting in improved compliance with	None

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
The Courts the dti CIPC		Education and awareness by CIPC and the dti to law enforcement institutions so that they are aware of the new offences and how to enforce the law where such offences have been reported.  CIPC to monitor compliance.	the law and increased payment of royalties.	
<p><b>Proposal 10:</b> (1) No person may make, import, sell, distribute, let for hire, offer or expose for sale, hire or advertise for sale a technological protection measure circumvention device if such a person knows or has reason to believe that it will or is likely to be used to infringe copyright in a technologically protected work.</p> <p>(2) No person may provide a service to any other person if—</p> <p>(a) such other person intends to use the service to circumvent an effective technological protection measure; or</p> <p>(b) such person knows or has reason to believe that the service will or is likely to be used by another person to infringe copyright in a technologically protected work.</p> <p>(3) No person may publish information enabling or assisting another person to circumvent an effective technological protection measure with the specific intention of inciting another person to unlawfully circumvent a technological protection measure in the Republic.</p> <p>(4) No person may, during the subsistence of copyright in a work and without a licence of the author of the copyright in such work, circumvent an effective technological protection measure applied by the author of the copyright to such work.</p>				

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
The public Tribunal SAPS The Courts CIPC <b>the dti</b> Copyright authors	None	<p>The Tribunal, SAPS and the courts would need to put in place mechanisms to establish whether the circumvention of the technological protection measure by the accused or alleged trespasser was deliberate or not.</p> <p>The public or would-be users of copyright works would incur costs of applying to the copyright author for assistance to enable circumvention as provided for in the Copyright Act 98 of 1978.</p> <p>The applicant will incur costs of engaging the services of another person for assistance, where the applicant did not receive a response or the request was refused as provided for in the Copyright Act 98 of 1978.</p>	<p>Improved protection of copyright authors whose work is subject to technological protection measures.</p> <p>Improved payment of royalties and benefits for copyright authors.</p> <p>Reduced cases of circumvention of technological protection measures.</p> <p>Increased use of technological protection measures to make copyright works available in digital or electronic form for the benefit of the public.</p>	<p>Enforcement of this provision may be difficult since it depends on whether the person knew or had reason to believe that the technological protection measure circumvention device made, imported, sold, distributed, let for hire would or was likely to be used to infringe copyright in technological protection measure work.</p>

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
		Education and awareness by the CIPC and <b>the dti</b> for copyright authors, law enforcement institutions, the public, so that they are aware of the provision to prohibit conduct that seeks to circumvent technological protection measures and the consequences for the contravention of the provision.		
<p><b>Proposal 11:</b> No person may—</p> <p>(a) in respect of any copy of a work, remove or modify any copyright management information; and</p> <p>(b) in the course of business make, import, sell, let for hire, offer or expose for sale, advertise for sale or hire a copy of a work if any copyright management information has been removed or modified without the authority of the copyright author.</p> <p>The prohibition in section 28R does not apply if a person—</p> <p>(a) is authorised by the user, performer, owner, producer or author to remove or modify the copyright management information;</p> <p>(b) does not know and has no reason to believe that the removal or modification of the copyright management information will induce, enable, facilitate or conceal an infringement of the copyright in the work; or</p>				

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
(c) does not know or has no reason to believe that the copyright management information has been removed or modified without the authority of the copyright user, performer, owner, producer or author.				
Copyright authors The public Sellers/dealers in copyright works Tribunal SAPS (South African Police Services) The Courts CIPC <b>the dti</b>	None	<p>The Tribunal, SAPS and the courts would need to put in place mechanisms to establish whether the removal or modification of the copyright management information was done deliberately to infringe on the performer's rights or not.</p> <p>The public or users of copyright works would incur costs of requesting authorisation of the copyright author to remove or modify the copyright management information as provided for in the Copyright Act 98 of 1978.</p> <p>Education and awareness by the CIPC and <b>the dti</b> for copyright authors, law enforcement institutions, the public and</p>	Increased protection of copyright authors' rights, and economic benefits because this provision seeks to ensure that the copyright management information is kept intact and not tampered with for all users of the works to be aware of and treat the works according to the indicated terms and conditions.	This provision may be difficult to enforce since its enforcement depends on whether one knew or had reason to believe that the removal or modification will induce, enable, facilitate or conceal an infringement of the copyright in the work.

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
		sellers/dealers in copyright works so that they are aware of prohibited conduct in terms of copyright management information and the consequences for contravention of the provision.		
<b>Proposal 12.</b> The Commission shall only register one collecting society for each right or related right granted under copyright. Where there is no collecting society for a right or related right granted under copyright, the user, performer, owner, producer or author may enter into such contractual arrangements as may be prescribed.				
Copyright authors / owners Collecting Societies <b>the dti</b> CIPC	Newly established Collecting Societies will incur costs in employing staff and office space, including setting up systems for registration and collection of royalties.	Collecting Societies would need to pay fees required for their registration with the CIPC.  Collecting Societies would incur costs of accounting to copyright authors in terms of their activities in relation to the administration of the rights in accordance with the provisions of the Copyright Act.  Collecting Societies would also incur costs of submitting reports and	Improved management and distribution of royalties leading to improved economic benefits to copyright authors/ owners.  Collecting Societies would benefit through remuneration in their administration of rights.	The CIPC would need to be adequately resourced for the registration and management of Collecting Societies to enable effective and efficient collection of royalties.

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
		returns to the CIPC to demonstrate that their affairs are line with the registration conditions and those royalties are distributed and utilised in accordance with the provisions of the Copyright Act.		
<b>Proposal 13.</b> The Minister may make regulations prescribing compulsory and standard contractual terms to be included in agreements to be entered in terms of this Act.				
<b>the dti</b> Copyright authors/ owners Publishers Producers CIPC	None	Education and awareness by <b>the dti</b> and CIPC on the regulations regarding the inclusion of minimum contractual terms in contracts between authors and publishers.  Compliance monitoring by the CIPC on the adherence to the minimum contractual requirements.  Costs of contractual arrangements between the	Improved protection of authors to ensure that they are rewarded fairly for their works.	The compulsory and standard contractual terms should be such that they are not deemed unfavourable by either party, therefore resulting in unintended consequences such as failure to enter into a contract.



Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
		author/ owner, and publishers/ producers.		
<b>Proposal 14.</b> The author of an artistic work shall enjoy an inalienable right to receive royalties on the commercial resale of his or her work subsequent to the first transfer by the user of that work.				
<p>Creators of artistic works</p> <p>Sellers/ buyers of artistic works</p> <p>Collecting Societies</p> <p>CIPC</p> <p><b>the dti</b></p> <p>The public</p>	None	<p>Collecting Societies or author would need to put in place measures to track sales of art works for the collection of royalties thereof.</p> <p>Education and awareness by <b>the dti</b> and CIPC to creators of artistic works and those involved in the sale of artistic works so that they are aware of this provision.</p> <p>CIPC to monitor compliance.</p>	Improved economic benefits for creators of artistic works as a result of the re-sale of their works.	Enforcement of this provision may be a challenge since it requires that the copyright author / owner or Collecting Society should always be aware of any re-sale of artistic work taking place. This would require establishment of a system for tracking and recording sales of artistic works.
<b>Proposal 15.</b> There is hereby established a juristic person to be known as the Intellectual Property Tribunal.				
<p>Copyright authors / owners</p> <p>CIPC</p>	National Treasury would be required to fund the establishment of a Tribunal in terms of	Education and awareness by <b>the dti</b> and CIPC to copyright authors / owners, Collecting Societies and	Dispute resolution would occur in a less costly and effective manner.	None

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
The public Collecting Societies <b>the dti</b> National Treasury	human, infrastructural and operational resources. <b>the dti</b> to monitor the performance of the Tribunal.	the public for them to be aware of the establishment of the Tribunal for the resolution of disputes that may arise in the implementation of the copyright legislation.		
<b>Proposal 16.</b> (1) A person who wishes to obtain a licence to do an act which is subject to copyright in respect of an orphan work must make an application to the Commission in the prescribed manner.				
Copyright authors / owners Users of copyright works <b>the dti</b> CIPC The public	The CIPC might incur costs of employing more staff to deal with orphan works.	Users of orphan works would need to pay fees for the licensing of orphan works.  Costs will be incurred by the intended user for gazetting and advertising in the national newspapers as part of searching for the author/ owner of the copyright work.	The provision to regulate orphan works and allow for its use by the public would enhance access to copyright works.	The CIPC would need to be adequately resourced for effective and efficient administration of orphan works.
<b>Proposal 17.</b> In addition to uses specifically authorised, fair use in respect of a work or the performance of that work, for the following purposes, does not infringe copyright in that work:  (i) Research, private study or personal use, including the use of a lawfully possessed work at a different time or with a different device;				

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
<p>(ii) criticism or review of that work or of another work;</p> <p>(iii) reporting current events;</p> <p>(iv) scholarship, teaching and education;</p> <p>(v) comment, illustration, parody, satire, caricature or pastiche;</p> <p>(vi) preservation of and access to the collections of libraries, archives and museums;</p> <p>(vii) expanding access for underserved populations; and</p> <p>(viii) ensuring proper performance of public administration.</p> <p>General exceptions:</p> <p>A library, archive, museum or gallery may, without the authorisation of the copyright owner, use a copyright work to the extent appropriate to its activities if the work is not used for commercial purposes.</p> <p>Any person may, without the authorisation of the author, make an accessible format copy for the benefit of a person with a disability, supply that accessible format copy to a person with a disability by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve these objectives.</p>				
Libraries Archivists Museums Galleries Persons with disabilities The public Copyright authors / owners Educational institutions	The CIPC might incur costs in employing staff members that will deal with applications for fair dealings and uses.	Intended users would incur costs for licensing to use copyright works for fair use purposes.  Education and awareness by <b>the dti</b> and CIPC to	The 'fair use' provision would lead to legal certainty to those using copyright works for 'fair use' purposes.	None

Groups	Implementation costs	Costs of changing behaviour	Benefits from achieving desired outcomes	Comments
Publishers CIPC the dti		<p>libraries, archivists, museums, galleries, educational institutions, persons with disabilities, the public, copyright authors / owners and publishers on the 'fair use' provisions</p> <p>The CIPC would need to put in place systems and processes for the administration of copyright works for fair use.</p>	Improved access to copyright works for fair dealings and uses.	

## **8 BUDGETS AND STAFFING REQUIREMENTS**

The CIPCs responsibility in the collective management of rights would require more resources towards the administration of this provision. In addition, the CIPC would be required to administer the licensing of orphan works, fair dealings and uses, and parallel importation. The establishment of the IP Tribunal will have financial implications for National Treasury.

## **9 HOW THE PROPOSALS MINIMISES IMPLEMENTATION AND COMPLIANCE COSTS**

The proposed amendments seek to protect the rights of authors and creators of works whilst balancing this with the promotion of access to such works for fair dealings and uses. Most of the proposals would come with increased implementation costs for the CIPC in terms of the administration of fair dealings and uses, orphan works and management of Collecting Societies. The proposals carry compliance costs in that they seek to ensure that users of copyright works compensate the creators of such works through payment of royalties. The Bill will also address lengthy and costly dispute resolution processes

## **10. DISPUTE RESOLUTION**

The Copyright Amendment recommends the establishment of an Intellectual Property (IP) Tribunal that will preside over disputes lodged on IP matters. The established Tribunal will deal with potential disputes from copyright authors/ owners, Collecting Societies, producers, broadcasters and the public that may arise from the implementation of the proposed amendments. For example, there could be disputes arising from the proposal on the fair dealings and use between copyright authors/ owners and educational institutions, archivists, libraries, archivists, museums, and galleries, because they will have to forfeit any royalties.

## 11. RISK MANAGEMENT

Identified risk	Mitigation measures
Infringement of the freedom to contract.	Minimum requirements will seek to offer fair compensation for both parties and not take away the freedom to contract.
Lack of capacity by Companies and Intellectual Property Commission (CIPC) to regulate Collecting Societies, administer orphan works, and fair dealings and uses.	Capacity issues will be addressed prior to the implementation of the new proposals to avoid unintended consequences.
Abuse of the 'fair use' provisions	The 'fair dealings and uses' provisions provide clear criteria to ensure that copyright users do not prejudice copyright owners.
Infringements of copyright	Education and awareness and information dissemination campaigns to the public, users of copyright works so that they are aware of the new provisions.
Litigation cases on wrongful classification of orphan works.	Stipulation of the search requirements to be adhered to before work could be declared as "an orphan".

## 12. MONITORING AND EVALUATION

Implementation monitoring of the proposed amendments to the Copyright legislation will be a continuous process that will inform decision making on the manner in which resources are employed and activities undertaken during implementation. The information acquired through the monitoring process will also inform the short, medium and long term evaluation of the Copyright legislation. CIPC will monitor compliance of the implementation of this Bill

There exists a Monitoring and Evaluation Unit within the Consumer and Corporate Regulation Division of the Department of Trade and Industry (**the dti**), which is responsible for the monitoring and evaluation of policies and legislation under the custodianship of the Division. The Unit will develop an M&E plan to guide the monitoring and evaluation of the implementation of the copyright legislation. Monitoring will be done on a continuous basis while evaluations will be undertaken within a period of 3 to 5 years. Monitoring and evaluation results will be assessed against the legislative objectives or outcomes and appropriate measures will be undertaken to ensure that the intended outcomes are realised.

### 13. IMPACT ON NATIONAL PRIORITIES

Priority	Impact
Social cohesion	<p>The collective management of copyright will ensure that authors and creators of works are duly rewarded for their efforts and this would eliminate any disharmony between creators, producers, publishers and users of copyright works, thereby contributing to social cohesion.</p> <p>Facilitating access to educational materials to the public, including persons with disabilities will provide communities with the knowledge and skills required for their social development.</p>
Security	The provisions will offer legal certainty to those who use copyright works and curb the infringement of copyright and breach of security over protected works.
Economic growth and investment	Rewarding creators of works offers economic benefits in the form of royalties and encourages innovation and investment in the creative industry.
Economic inclusion (employment creation and equity)	The collective management of copyright will offer a platform for both big and small scale creators to get recognition for their work by registering with Collecting Societies to receive rewards for their works. Collecting Societies would serve as an incentive for creators of works (especially emerging authors) to enter the mainstream economy and reap economic benefits for their efforts.
Environmental sustainability	None

#### 14. SOCIAL AND ECONOMIC GROUPS TO BENEFIT AND BEAR THE COST THE MOST

Main beneficiaries	Main cost bearers
Copyright authors/ owners	CIPC
The State	Collecting Societies
The public	Producers and publishers
Collecting Societies	Copyright authors/ owners
	Users of copyright works
	The State
	The public

#### 15. CONCLUSION

In conclusion, the proposed legislative amendments will achieve the intended outcomes and offer authors and creators of copyright works the benefits due to them if education and awareness and the regulatory capacity of the CIPC are increased. The proposal for the management of copyright, management of orphan works and management of 'fair use' of copyright works will require increased regulatory capacity for the CIPC. The provisions that offer increased protection in the area of commercial re-use of works, re-sale of works of art and digital works will necessitate education and awareness by **the dti** and CIPC.

#### 16. AREAS FOR ADDITIONAL RESEARCH

No areas of further research.

#### 17. COMPILATION OF SEIAS

<b>Name of the Official:</b>	Mokgadi Mathonzi
<b>Designation:</b>	Director
<b>Unit:</b>	SEIAS
<b>Contact Details:</b>	012 394 1141
<b>Email address:</b>	mmathonzi@thedti.gov.za



**OFFICIAL SIGN OFF FOR THE COPYRIGHT SEIAS REPORT:**

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**Z. NKONYANE**

**CD: M&E AND SEIAS**

**DATE:**

Approved/ not approved

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**M. NETSHITENZHE**

**ACTING DDG: CCRD**

**DATE:**