

Summary of Submissions for the Copyright Amendment Bill [B13-2017]

1. Introduction

The Copyright Amendment Bill (CAB) intends to address and resolve issues arising from the findings of the Copyright Review Commission (CRC). These issues include/are:

- The non-payment of royalties;
- The lack of formalisation of the creative industry and the related abuse;
- The incidence of piracy; and
- The moral and economic rights of performers related to audiovisual fixations.

The CRC Recommendations were as follows:

- South Africa should amend its **Copyright Act by adopting *inter alia* the right to communicate literary and musical works to the public** and the right to make available copies of sound recordings;
- The copyright law should be amended **to allow the Registrar to take over the administration** (as opposed to the withdrawal of accreditation) of any relevant collecting society (SAMPRA, NORM or SAMRO);
- Legislation be amended **to allow for one collecting society per set of rights with regard to all rights governed by the Copyright Act of 1978** (performance, needle time and mechanical rights).
- The law should be amended to allow for all music-rights collecting societies (**SAMRO, NORM and SAMPRA**) to fall within the ambit of the **regulations issued under the Act;**
- The legislation to be amended as follows: **retention of music usage information to be compulsory for essential music users;**
- The Copyright Act must be amended **to allow rights holders (as well as users) to engage the Copyright Tribunal in disputes** about the appropriate tariffs to be applied;
- The Acts should be amended to provide that **needle time be divided equally** between the owner(s) of the copyright in the sound recordings and the owner(s) of the neighbouring right to needle time
- The Copyright Act must be amended to include a section modeled on that in the US Copyright Act providing for the reversion of assigned rights 25 years after the copyright came into existence;
- The definitions of local music contained in the EC Act should be enlarged;
- The Copyright Act should be amended to adopt the right 'to communicate the work to the public' and the 'making available' right as two new exclusive rights of copyright owners.

Adherence to the good principles of corporate governance should be compulsory for collecting societies. The CRC recommendations were presented to the Portfolio Committee (PC) in 2012. These recommendations were supported by industry even when the 2015 CAB was published for wider consultation. A Task Team of Deputy Director- Generals (Arts and Culture, Trade and Industry and Communications) was set up to ensure the

implementation of the recommendations, the Task Team report of 2015 was provided to the PC. In addition a Presidential Task Team of Deputy Ministers for the Creative Industries has also been established and is chaired by DM Buti Manamela. The Task Team works with all Government Department and endorses the CRC recommendations and the amendment to the Copyright and related rights legislation.

The Copyright Amendment Bill focuses on the:

- Definition of certain words and expressions;
- Allowance for the reproduction of copyright work;
- Provision for the protection of copyright in artistic work;
- Provision for the accreditation and registration of Collecting Societies;
- Provision for the procedure for settlement of royalties disputes;
- Allowance for the fair use of copyright work;
- Provision for access to copyright works by persons with disabilities;
- Provision for the protection of authorship of orphan works by the State;
- Provision for the establishment of the Intellectual Property Tribunal, the appointment of its members and its powers and functions;
- Provision for prohibited conduct in respect of technological protection measures and copyright management information;
- Provide for the management of digital rights; and
- Provision for certain new offences.

The Copyright Amendment Bill incorporates the following International Treaties which will be ratified:

- The World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT);
- The WIPO Performances and Phonograms Treaty (WPPT); and
- The Marrakech Treaty to facilitate access for published works for the blind and visually impaired persons (Marrakech Treaty)
- The Rome Convention (needletime).

The process of ratification of International Treaties was clarified in writing to the PC on the 24 April and 6 June 2017. It is important to note that even though there is a policy decision to ratify the treaties implementation still requires an amendment to the Copyright Act 98 of 1978. These amendments are included in the Copyright Amendment Bill 2017 before the PC in order to streamline the process of ratification and for South Africa to be able to comply with the relevant timeframes of implementation of the treaties once an instrument of ratification has been deposited. the **dti** has already engaged the Department of International Relations and Cooperation in this regard and therefore when the process on the Copyright Amendment Bill is completed ratification of the treaties will ensue and follow a separate process after Parliament has agreed to the Treaty language of the Bill.

The CAB covers issues that should be talking to national, regional and international perspectives. The stakeholders also in responding sometimes touched on national and foreign jurisdictions. Internationally Intellectual Property (IP) is regulated by various treaties or conventions.

These treaties/conventions allow national government (member states) to use their discretion in dealing with other issues. Certain issues are not concluded internationally and therefore each member state can do as it pleases. A good example is international exhaustion of IP. WIPO has concluded certain treaties and most of them are not ratified by the Republic and therefore are not necessarily "binding".

South Africa has a Constitution that has a Bill of rights that issues in the CAB can be addressed. Good examples of these rights are the freedom to education/health. International law is therefore recognised by the Constitution in the application of law. Courts and forums in applying international law should look at national, foreign and international law. The Makwanyane case went to an extent of saying that both ratified and unratified treaties can bind the Republic. This means that if there is a case in the Constitutional Court in the absence of the Republic ratifying these treaties, a progressive court can conclude that the Republic is bound by such unratified Treaties.

The National Development Plan (NDP) talks of eradication of poverty and the CAB also claims to seek to eradicate poverty. The NDP therefore directs that whatever the intention of this CAB, the results should comply with the Constitution.

The CAB provides for exceptions and limitations. If exceptions and limitations are allowed in International Treaties, therefore when national legislation incorporates such issues, they are not contradicting Treaties that contain such limitations. This is so provided they are compliant with, e.g. the three step test of the Berne Convention Appendix in the interpretation of the exceptions and limitations. The Marrakesh Treaty is sort of a limitation or an exception to copyright to be used by Blind people. Justified use or dealing should be applied, preferably with wider interpretation. Foreign application of the law can be borrowed from other jurisdictions. It would be sad to listen to only legal purist/orthodox in this era when our courts have been broadly borrowing from pragmatic and progressive jurisdictions.

Local Content:

Regulating issues of local content is a competency of the Minister of Communication. The Farlam Commission recommended that the radio local content should be raised together with the local content of TV. In the Task Team of the four departments it was agreed that there should be radio and TV quotas. The political heads have to agree on the rate of the local content, and this is why the Ministers are to consult with each other. The Minister of Trade and Industry communicated the report to his counterparts.

The Copyright Act can consequentially amend the Department of Communication legislation, provided that the three Portfolio Committees agree- hence proposed clause. The rate of local content is very low and the court has confirmed a low tariff, whereas the counterpart such as India has a higher rate. The value of IP seems to be underrated.

Artist Resale Right/Resale Royalty:

Regarding the Resale right, the European Union, California (US) and the United Kingdom all have the Resale right but there is no collapse of the Gallery industry. It is not fair just to say South Africa doesn't respect IP and the EU does. The approach in this Bill is that benchmarks were done but emphasis is placed on the need to provide a solution to locals.

Collecting Societies should be regulated and should be managed well in line with good governance principles. Issues of national/reciprocal treatment should be incorporated accordingly. The rights of copyright holders in this regard should remain with them and/or copyright holders should receive royalties from whoever exploits their rights.

When stakeholders utter statements they must be backed by facts, and truth and Parliament may demand that all persons including **the dti** should submit all submissions under oath. Parliament must not be misled under any circumstance.

Socio Economic Impact Assessment Report (SEIAS) 2017 and the Regulatory Impact Assessment (RIA) 2014:

An independent assessment was undertaken in 2014 after the Draft IP Policy was published for public comments in September 2013. The assessment was focused on a selection of policy proposals in the Draft IP Policy, identifying the critical policy themes as representative of the core policy objectives and significant change in the IP regulatory landscape. One of the critical policy themes the RIA assessed was the amendment of various legislation to implement the contents of international treaties; in the domains of Copyright, Designs and Trade Marks. Further to this, the assessment was meant to identify important proposals missing from the Draft IP Policy; the assessment was to assist the policy developer and decision makers to help improve the Draft IP Policy, some of these proposals were the adoption of fair use/fair dealing provisions and the Artist Resale Royalty.

The CAB SEIAS Report was certified on 29 May 2017 by the Department of Monitoring and Evaluation (DPME). This was after it was published by the PC for public comments on the 7 May 2017. Hence, the PC has made it available on request. The SEIAS does meet the guidelines of the DPME.

Consultation with Stakeholders:

SAMIC – South African Music Council

CCIFSA - Cultural and Creative Industries Federation of South Africa

MASA – Musicians Association of South Africa

SAGA – South African Guild of Actors

2009 – Creative Industry Meeting with the President at Sandton Convention Centre

2011 – Copyright Review Commission (CRC) Task Team – to Refer Appendix 1A and 1B of CRC

2014 – Industry Roundtable

06 August 2015 – Non Governmental Organisations Consultation on CAB/PPAB

07 August 2015 – Publishers Consultation on CAB/PPAB

10 August 2015 – Anti Counterfeit Consultation on CAB/PPAB

10 August 2015 – Visual Arts Consultation on CAB/PPAB

10 August 2015 – Innovation Hub Consultation on CAB/PPAB coordinated by Joint Academics

12 August 2015 – Attorneys Consultations on CAB/PPAB

12 August 2015 – Photographers Consultation on CAB/PPAB

14 August 2015 – Authors and Writers Consultation on CAB/PPAB

14 August 2015 – Broadcasters Consultation on CAB/PPAB

14 August 2015 – Telecoms Consultation on CAB/PPAB

17 August 2015 – Collecting Societies Consultation on CAB/PPAB

19 August 2015 – Government and Agencies Consultation on CAB/PPAB

27 August 2015 – Birchwood Hotel CAB Conference (500 attendees)

23 September 2015 – Arts and Culture Workshop (CAB/PPAB 2015 presented) in Thohoyandou

September 2015 – Galleries and Photographers Consultation in Cape Town on CAB/PPABB

29 September 2015 – Musicians Workshop in Thohoyandou (CAB/PPAB presented)

16 March 2016 – Witswatersrand Consultation on CAB/PPAB

06 April 2016 – Industry Bodies Consultation (CCIFSA/SAMIC/ARTINET/SAGA/MASA) on CAB/PPAB

06 April 2016 – UK Delegation meeting (Artist Resale Right and Collecting Societies) coordinated by CIPC

22 April 2016 – SASOL Consultation on CAB/PPAB

29 April 2016 – Musicians Workshop at Thohoyandou on CAB/PPAB

03 May 2016 – Department of Small Business and Development Consultation on CAB

12 May 2016 – Department of Small Business and Development Consultation on CAB

12 May 2016 – Department of Social Development meeting on CAB/PPAB

11 July 2016 – Modiri Mochoari Musicians Consultant Consultation on CAB

7-10 September 2016 – Moshito (Musicians and Composers) presentation on the CAB/PPAB

25 August 2016 – SAMIC meeting on CAB/PPAB

26 August 2016 – PASA Legal representative on CAB

30 August 2016 – PASA AGM Presentation on the CAB

15 October 2016 – Actors Industry Meeting Consultation on CAB/PPAB

22 October 2016 – Actors Industry Meeting Consultation on CAB/PPAB

23 November 2016 – Independent Producers Organisation (IPO) presentation on CAB/PPAB

12 December 2016 – American University College of law meeting on CAB/PPAB

24 January 2017 – Musicians Association of South Africa (MASA) consultation on the CAB/PPAB

14 & 15 March 2017 – WIPO Workshop on Collective Management of Copyright and Related Rights in Music

11 August 2017 – Musicians Indaba presentation of CAB/PPAB

2. Summary of core issues

- Fair dealing that deals with closed issues regarding exceptions was raised. Other stakeholders are entrenched in that fair dealing should only draw from the United Kingdom where it originates.
- Fair use that emanates from the United States was also raised. The fair use provision provides for an open list of issues that should be dealt with. The proponent of fair use also indicates that certain jurisdictions that use fair dealing doctrine are either broadening the scope of fair dealing or are migrating from fair dealing to fair use. There is also empirical that countries who adopted fair use system are rich in innovation.
- There seems to be many supporters of fair use system (32) than fair dealing system (18).
- Fair use is a technology neutral open system.
- One benefit of flexible of the fair use system is adaptability, which can cover unanticipated new uses and technologies. Whereas rigid/closed fair use/dealing provisions become out-dated rapidly and do not facilitate a thriving technological industry..
- Many stakeholders support the ratification of international treaties. The Association of the Blind recommends that the provisions of the Marrakech Treaty in the Bill needs to be implemented faster than other provisions if there are somewhat delays. The Bill contains cross-border provisions which are supported. The broader definition for the intellectually impaired is also supported by the association of the Blind of South Africa.
- In the main the resale right is supported by the relevant stakeholders. Certain stakeholders know of jurisdictions that have resale right (80 jurisdictions) the European Union (EU), United Kingdom, Russia and California in the United States. South African stakeholder Aspire Art Auctions insists that a collecting society for visual arts artists should be created by an Act and a sliding scale for royalty collection should be modelled on the EU experience. ANFASA is of the view that royalty collection in this area may be cumbersome and may defeat the purpose of creating the resale right.
- IP is not the only determinant factor of foreign direct investment (FDI) there are other factors which influence the inflow of FDI such as local advantage, market size, transportation costs, distance, local demand and labour costs. Therefore the argument that limitations and exceptions would result in lower FDI does not hold.
- The Bill, including the Performers Protection Amendment Bill (PPAB) claim to have covered issues raised by the CRC led by Judge Ian Farlam.

3. List of stakeholders

The following stakeholders made oral submissions on the Bill (1,3 and 4 August 2017):

1. Professor S Karjiker-US
2. Dr T Schonwetter-UCT
3. Dramatic Artistic and Literary Rights Organisation (DALRO)
4. South African Music Rights Organisation (SAMRO)
5. Professor S Flynn –Global Network on Copyright User Rights
6. Publishers Association of South Africa (PASA)
7. South African Institute for Intellectual Property (SAIIPL)

8. Copyright Alliance (CA)
9. Graeme Gilfillan
10. Documentary Filmmakers Association (DFA)
11. Google SA
12. Wikimedia ZA
13. Composers Authors and Publishers Association (CAPASSO)
14. Freedom of Expression Institute (FXI)
15. Kagiso Media
16. South African Guild of Editors (SAGE)
17. MNET/Multichoice
18. Recording Industry of SA (RISA)
19. Geof Kirby-Xrystal Productions
20. Media Monitoring Africa (MMA)
21. Independent Music Performance Rights Association (IMPRA)
22. Cultural and Creative Industry Federation of South Africa (CCFISA)
23. Academic and Non-fiction Authors Association of South Africa (ANFASA)
24. South African National Council of the Blind
25. International Federation of Film Producers Association
26. South African Book Development Council
27. South African Guild of Actors
28. South African Screen Federation
29. National Association of Broadcasters
30. Library and Information Association of South Africa (LIASA)
31. Spoor and Fischer
32. American Chamber of Commerce (AMCHAM)
33. Innovus
34. Department of Science and Technology (DST)
35. South African Composers

The following stakeholders made written submissions only on the CAB:

36. South African Regional Universities Association (SARUA)
37. Free Market Foundation (FMF)
38. Aspire Art Auctions
39. Australian Digital Alliance
40. Centre for Health Innovation and the Public Interest
41. Dr L Tong

42. Electric South Africa
43. Gauteng Province Sports, Arts, Culture and Recreation
44. Jade Kouletakis
45. International Federation of Reproduction Rights Organisations
46. Loyala University Chicago School of Law
47. Musicians Association of South Africa (MASA)
48. National Film and Video Foundation (NFVF)
49. Michael Palmedo (American University Washington College of Law)
50. Peter Jaszi (American University Washington College of Law)
51. Puku Children's Literature
52. International Confederation of Societies of Authors and Composer (CISAC)
53. International Publishers Association
54. Institute of Race Relations NPC
55. Reddam House
56. South African Writer's Circle
57. SASOL
58. Strauss & co
59. PEN Afrikaans and PEN South Africa
60. Uhuru Productions
61. Universities South Africa(USAF)
62. Visual arts network South Africa
63. Music Publishers' Association of South Africa
64. Section27
65. South African Library for the Blind
66. Ster-Kinekor Theatres
67. International Association of Scientific Technical and Medical Publishers(STM)
68. Library Copyright Alliance
69. International Federation of Library Associations and Institutions (IFLA)
70. AmaBhungane Centre for Investigate Journalism (amaBhungane)
71. Legal Deposit Committee
72. Denise R. Nicholson (personal capacity)

4. Specific comments/Questions Raised by Stakeholders

| Name of the Stakeholder | Comment/Question | Response by the dti |
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| Professor S Karijiker-US | <ul style="list-style-type: none"> • The Prof. criticised the drafting of the Bill from the perspective that there is a misunderstanding of Copyright law. • However; the presenter did not provide any proposal on remedying the drafting of the Bill. • The Professor did not indicate specific – technical areas of the Bill that could be improved, he further indicated that he is agnostic towards the Resale Royalty Right (RRR). • It was indicated that the EU is currently bolstering property rights by using the rights as collateral whereas SA is eroding property rights. • The Prof indicated that he could not assist further as he as a full time job. | <ul style="list-style-type: none"> • the dti agrees that definitions of certain words such as “user”, “creator” and “author” need to be defined correctly and be used within the context, e.g. “user” should be the one who pays a royalty to the “creator”/”author”/”producer” and holders of Intellectual Property (IP). • Where the “user” produced a new work altogether from the original work owned by the IP owner/author, the “user” may become the IP owner of the new product. |
| Dr T Schonwetter-UCT | <ul style="list-style-type: none"> • Dr. Schonwetter indicated that a transparent, open and inclusive stakeholder consultation process was done on the proposed legislation. • He further indicated the importance of the legislative reform Dr. Schonwetter emphasised that Copyright should be for the maximum benefit of society at large, over protection or under protection can impede Copyright and therefore a balance needs to be struck. • He further indicated that not all criticism against the Bill pertains to Copyright. He urged Parliament to assess the value of the legislation before them and he created a check list for Parliament to utilise. • Some confusion has been caused by Rights | <ul style="list-style-type: none"> • Agrees to improve the drafting and the technical phrases to correspond with rights and obligations of various parties. • Definition of “disability” needs to be broader than the definition contained in the Marrakech Treaty to cover other disabilities. • the dti agrees and supports the issue of fair use/fair dealing even if it may be a hybrid. Four factors should be tailor made in order to determine whether a work is fair not. • the dti does not agree that limitations or exceptions of rights in terms of international treaties that SA is a member do not violate the Constitution. |

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| | <p>Owners vs. Authors, but this can be fixed in the Bill. He recommended a less complex definition of persons with disability. The State Funded IP (Section) clause must be aligned to the IPR Act.</p> <ul style="list-style-type: none"> • Dr. Schonwetter supports an open fair use provision by the adding the words “such as” and removing the comma from the quotation marks section. • The four factors provided for in the Bill will be used a test to determine whether the use will be fair or not. He indicated the advantages of having an open fair use provision; that the legislation will be equitable, future proof and facilitate innovation. • The fair use provision does not infringe section 25 of the Constitution. He indicated that the objective of Copyright should not be to maximise profits and that rewards can also be limited. • The Bill will be a tailored law that is cognizant of issues facing South African creators and rural communities. It should be noted that grass root problems are not Copyright issues but relate to unfair competition and unfair contracts. • The Copyright legislation in SA is TRIPS compliant as well as with other international treaties. The Bill does not interfere with rights only but introduces exceptions and limitations. • Dr Schonwetter indicated that the argument of increased litigation ito fair use is not a Copyright problem but a litigation problem and that there is no proof that licensing revenues will be destroyed. Further the issues in Canada relating to fair dealing were not caused by the | |
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| | <p>introduction of the law but other factors played a role.</p> <ul style="list-style-type: none"> • Fair use does not encourage piracy. | <ul style="list-style-type: none"> • the dti submits that fair dealing/use or hybrid does not encourage piracy. |
| Dramatic Artistic and Literary Rights Organisation (DALRO) | <ul style="list-style-type: none"> • Bill takes away moral rights of authors. There is a misinterpretation of the CRC report into Collecting Societies-one collecting society per set of Copyright rights. • DALRO collects for several rights. Supports the Artist Resale Right, the making available right and DALRO works with artists therefore DALRO is in a position to collect. • Supports the introduction of a private copy levy. Supports the regulation of Collecting Societies. | <p>the dti submits that:</p> <ul style="list-style-type: none"> • Moral rights are entrenched in the Copyright Amendment Bill. • CRC resolute about regulating on one Collecting Society (CS) per set of rights and Constitution and Competition law considered. • Private levy copy was never denied by the dti was agreed with RISA, MASA, CCIFSA and DALRO etc., but State Law Advisor said we would be introducing new issues. Agreed that the matter can be raised in Parliament and the dti will not object. • Bill stems from the 2013 Draft Intellectual Property Policy. • Bill follows the Constitution and International Treaties on limitations of rights. • Fair use/dealing/hybrid has safeguards and the Tribunal/Courts are competent to apply the law guided by other jurisdictions. • Collecting Societies should collect from members only. |
| South African Music Rights Organisation (SAMRO) | <ul style="list-style-type: none"> • SAMRO welcomes the communication to the public right. Not opposed to the Bill however requests closer engagement on how industry works. Request the introduction of a private Copyright levy into the Bill. • IP is a property right and fair use will give users more rights/benefits at the expense of the creator. The user has an interest and not a right to access copyright works. • Indicated that the Bill stems from the IP consultative framework. Concerned that there | <ul style="list-style-type: none"> • the dti as explained is not opposed to the private copyright levy, but not as a compensation for the introduction of fair use or its hybrid. • the dti submits that there are safeguards for the fair use doctrine or the hybrid between the fair dealing/use. • the dti welcomes the submission on the regulation of collecting societies. |

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| | <p>are no safeguards for fair use.</p> <ul style="list-style-type: none"> • Bill introduces expropriation of property and property cannot be expropriated without compensation. SAMRO commissioned R90 million for writers. Collecting Societies best to deal with orphan works. • Support the regulation of the Collecting Society. The Bill should introduce statutory measures for non-compliance of reporting. | |
| <p>Professor S Flynn –Global Network on Copyright User Rights</p> | <ul style="list-style-type: none"> • Advocates for the Bill to have an open ended access fair use provision, as the Copyright genesis is franchise law and not property law. The history of Copyright is a public duty history. There is no provision in the Bill that expropriates property. Prof Flynn indicated that fair dealing and fair use equate to the same thing, the “magic” words are inclusion of “such as” in the Bill. The Bill states not for any use or any dealing. • Fair use will only apply to the mentioned purposes in the Bill; the 4 part test will bring restraint to what is fair. Prof Flynn indicated that fair use does not diminish profits. Emphasis placed on South Africa’s ability to innovate through an open fair use provision as a rigid copyright law does not allow for innovation or contribute to the digital economy. • The enabling requirement of fair use assists entrepreneurship. • Fair use is flexible and transformative and can be implemented in ways that do not compromise the author. He indicated that Fair Use is what gives the US the competitive advantage. • He provided evidence from an economic | <ul style="list-style-type: none"> • the dti supports fair use with its openness or non-exhaustive list. • The non-exhaustive list should be covered by the wording “such as” in the Bill. • Innovation will be encouraged as it does not introduce competition with copyright holder. • Fair use does not introduce piracy and profits of the rights holder not affected. • Other developing countries such as Singapore and Philippines are adopting fair use doctrine. • There is no evidence that fair use succeeds in litigious countries. In anyway the informal nature of the Tribunal in resolving disputes will mitigate the need to litigate. • the dti notes that the empirical evidence of the economic impact of fair use. |

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| | <p>database that was created that indicates countries perform better, publishers and broadcasters do better as well and that industry was not harmed. He recommended that the protection of orphan works can be done under the fair use provision as it will not require further resources.</p> <ul style="list-style-type: none"> • These are the countries that have an open and accessible fair use/dealing provision are Philippines, Sri Lanka, Singapore, Taiwan, Israel, Malaysia, Korea and China. | |
| <p>Publishers Association of South Africa (PASA)</p> | <ul style="list-style-type: none"> • Indicated that access and funding is a problem.60% of all publishing is education. Challenge of access should be distinguished from funding and copyright. Commissioned a study by the PWC to assess the impact of Fair Use on the South African publishing industry. Reference made that the universities holding back on licensing. • Support the ratification of the Marrakech Treaty. • Publishers play a role of curation and aggregation. • RIA and SEIAS report was not made available. • Music principles don't fit across the Bill. Bill should be tailored made with specific solutions. • The making available provision doesn't go far enough. | <p>the dti submits that:</p> <ul style="list-style-type: none"> • Access to education is directly proportional to copyright, that is why international treaties have provisions on exceptions and limitations. • The PWC study should not be relied upon as it does not take into consideration the impact on all sectors and only considers the publishing sector. The Study fails to see copyright as a growth industry and that an open approach contributes to a robust system. In addition there are only cons discussed in terms of fair use and no indication of the pitfalls of the current fair dealing provision. Universities were not consulted in this study. • The Marrakech Treaty supported hopefully means that there is no compensation. • Universities use to sign long term contracts (3yrs) but they have signed a one year contract until such time as the Bill becomes as Act of Parliament. When Marrakech is in force, the blind people will have access to learning materials and therefore and therefore costs will be reduced. • Making available clause is provided by the |

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| | | treaties and South Africa will not request a reservation during ratification. |
| South African Institute for Intellectual Property (SAIPL) | <ul style="list-style-type: none"> • There is a need for the Copyright Act to be updated but it should be updated within a proper legal framework. There is a need for access and for specific industries to be recognised and to encourage and enable the creative industries. The legislation needs to stay abreast with legal developments. Need for clarity on terms such as user. The model for orphan works needs to be refined. • Further areas that require attention in the Bill are assignment, fair use, State Funded property and the Artist Resale right. The user royalty right covers only 4/9 categories of copyright works. • Why is the user right not applicable to all works? Which party is liable for user royalty? Resale royalty is understood to support the new, young, emerging artist. The definition of artistic work in this regard is very broad. The Minister has to prescribe the rate there is no sliding scale provision. The Resale Royalty and the user right are unworkable in practice. Who will bear the cost of paying the resale royalty? • There is repetitive drafting in clause 12 of the Bill. • Some of the new concessions are needed but the policy positions need to be readdressed. Do not support the introduction of the US Fair Use provision; it is unprecedented to look at the US. | <ul style="list-style-type: none"> • Technical terms such as “user”, “owner” and “producer” to be accordingly used correctly. • Resale right is well coined like in the jurisdictions where it is practiced. • The rate in resale right needs to be in ascendancy as work appreciates as it matures. • Regarding fair use, the South African legal system allows both the courts and policy makers to compare with other jurisdictions. US is not an exception. (Other issues-need to wait for their proposals.) • SAIPL support for the Copyright Tribunal is well reasoned and noted. |
| Copyright Alliance | <ul style="list-style-type: none"> • Do not agree with the limitation of assignment to 25yrs, made reference to the fact that the | <ul style="list-style-type: none"> • the dti notes the arguments of the Copyright Alliance and will be considered during the |

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| | <p>CRC did do refer to the dickens clause that was previously in the Copyright Act.</p> <ul style="list-style-type: none"> • The Intellectual Property Laws Amendment Act (IPLAA) is not in force and therefore cannot be made reference too. Do not agree with the clause on the State Funded property. • There is an improper incorporation of foreign and international law. Does not support the international exhaustion system for parallel importation recommended maybe opt for regional exhaustion? The Fair use provision is not supported and the three step test of the Berne Convention is not included in the Bill. • Not in support of a broad definition of persons with disability as the Marrakech Treaty deals only with visually impaired persons. Right of communication to the public doesn't go far enough. Indicated that | <p>improvement of the Bill.</p> |
| <p>Graeme Gilfillan</p> | <ul style="list-style-type: none"> • The Bill requires legal certainty this can be done with the inclusion of more definitions. Rights are revenues; the current Act is not robust. SAMRO takes ownership, Performers don't own their rights, the record company owns content and the performer owns nothing. Collecting Societies own all the rights. RISA and SAMPRA control rights and these are owned by multinationals. SAMRO didn't consult membership only the board in regard to submissions made at the public hearings. DALRO is owned by SAMRO. Publishers control licensing. Government doesn't have access to data. Matter regarding the National Anthem being licensed by foreign entities, a lot of money does not come back to South Africa. Recommended that the sound recordings require the adoption right. Dramatic works, | <ul style="list-style-type: none"> • the dti welcomes the need for rights holders such as performers and other copyright owners should be owners of content. In this regard collecting societies must just be agents but not the owner. • the dti/CIPC should have the right to audit the Deeds of Assignment to third parties for exploitation by local and foreign collecting societies. • the dti supports the alignment of the Electronic Communication Transactions Act and the Copyright Act in relation to data transactions and safe harbour provisions. • the dti welcomes the support on fair use and the issue of local content to dealt with by the relevant Ministers. |

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| | <p>data. Supports the Amendment Bill. Harmonisation is required in terms of the Electronic Communication Transactions Act in terms of the rules governing data transactions and the safe harbour provisions.</p> <ul style="list-style-type: none"> • Supports Fair use and local content must be in the scope of the Ministers responsibilities. Dramatic works should be eligible for copyright. | |
| Documentary Filmmakers Association | <ul style="list-style-type: none"> • Documentary film is a unique niche. Copyright ownership is by TV companies outside of South Africa. Support balance of Copyright. Support the amendments, respect user rights as there is a symbiosis of user and creator. Copyright must not be a charter for censorship. Strongly support the update of the Act and support digitisation. The Bill fails in S21(1)I in terms of ownership of copyright. Recommendation S21(1)I should be deleted from the Bill this section does not allow for the exploitation of work. • DFA want rights to their work, access. Contract can be default position. Support and open fair use provision for robust innovation. Support SAFED submission. It is important. The Government incentives need to be aligned with the legislation. State funded IP needs to be reconsidered and also consider provincial financial structures and funding. Section should be deleted. | <ul style="list-style-type: none"> • the dti welcomes support on digitisation of copyright regime. • the dti respects the Berne Convention in relation to commissioned work. However contractual arrangements should be the first option. Court Judgment attached. |
| Google SA | <ul style="list-style-type: none"> • Many presentations have given misinformation. The Bill has come a long way since 2015. Indicated how Google fights piracy. Music is less than 12% of content on YouTube. Fans are also creators. Legitimate uses of copyright material inspire innovation | <ul style="list-style-type: none"> • the dti is receptive to the notion of hybrid system on fair dealing and use. • the dti also welcomes the issue of remixing (DJs) of songs that encourages innovation. • the dti agrees that fair dealing and fair use should not be equated with piracy. |

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| | <p>and creation for development. Content must be made available legitimately.</p> <ul style="list-style-type: none"> • Fair use and Fair dealing can coexist. Fair dealing is a closed list of specific exceptions. Fair use is open and flexible. A hybrid can work can coexist. 4th industrial revolution can be supported by fair use. Fair use isn't a license for piracy. A remix exception should be added to the Bill as this will strengthen the Bill. Legislation should be future proof. Fair use does not imply fair usage of copyright works without compensation that is piracy. Linking should be differentiated from communication to the public. | |
| Wikimedia ZA | <ul style="list-style-type: none"> • Dealt with the Freedom of Panorama right. Legal grey area. Recommendation of the inclusion of freedom of panorama into the Bill as it expands into all media forms. The <i>status quo</i> a person will be liable to pay a royalty to an owner of a building for example, Google street view. | <ul style="list-style-type: none"> • the dti supports the inclusion of the freedom of panorama as currently this is a grey area. |
| Freedom of Expression Institute (FXI) | <ul style="list-style-type: none"> • Welcome the amendments to the Bill and the Fair Use doctrine. The 4 step test will establish parameters. Everyone who is a creator is recreating. Poetry is not covered in the current fair use provision of the Bill. Artificial Intelligence should be added to the list. Support an open access and open provision. The provision provides increased innovation and legal certainty. In terms of increased litigation, the first arbitrator will not be the court. • Rights holder would rather have a fair use provision as this prevents pirated goods. Any transformative use that allows creative expression under clause 10 of the Bill. | <ul style="list-style-type: none"> • the dti welcomes the support of an open fair dealing/ use and hybridisation can take place. |
| Kagiso Media | <ul style="list-style-type: none"> • Work with composers, musicians and actors. | <ul style="list-style-type: none"> • the dti supports that creators, composers, |

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| | <p>All owners and creators to be protected. Clause 2 of the Bill tables and compilations should not be excluded. Clause 3(2)(a) State funded IP, funded by is not defined and the definition should exclude incentives. Clause 4, 5 and 6 of the Bill in terms of the user is problematic as the term user is not defined. Clause 8 of the Bill formalise process of royalty collections but the process is cumbersome and needs to be streamlined to the existing of collective process. Clause 9 of the Bill the ARR, the definition of artistic work is a broad definition.</p> <ul style="list-style-type: none"> • The royalty rate to be prescribed by the Minister removes power of negotiation. Reject the fair use provision and continue with the current fair dealing. Will increase litigation. Clause 11 treats all copyright works the same and these exceptions should be limited. Clause 13B Publishers Education and academia need to consult as the new provision will kill the publishing industry; the new provision will allow the copying of a whole textbook. Provision to be deleted in its current form. In the absence of an impact study by the dti there is the PWC study. Clause 20 of the Bill removes the provision granting an author an exclusive right. • Clause 21 of the Bill limiting assignment to 25 years will cause red tape and deincestivise authors, creators and actors. Support the strategic objectives of the Bill. Local content is regulated by ICASA and its inclusion in the Bill is unconstitutional and the dti will find itself in court. | <p>musicians should be the owners and protected.</p> <ul style="list-style-type: none"> • Resale Right should be restricted to only visual arts. • the dti does not support the fact that rates/tariff should not be prescribed by the Ministers as it is alleged that this takes away the powers of negotiation between the parties. • The reversion clause is supported only in the royalty payments/music rights as per the CRC report: this is so even if it is out-dated; it assists the creator to an option to renegotiate new favourable clauses. • the dti does not support that local content should not be regulated by the three Ministers. ICASA can still be the implementer of local content. |
| Composers Authors and Publishers | <ul style="list-style-type: none"> • The current Bill is not supported. CAPASSO | <ul style="list-style-type: none"> • the dti does not support that Collecting |

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| Association (CAPASSO) | <p>distributed 125 million since 2014. State funded IP removes copyright ownership. S21(1)I commissioned works. Fair use is not supported as the list is to open. Retain the current fair dealing and add parody and pastiche. Introduction of a private copy levy to balance out the exceptions. Orphan works are not a challenge in the music sector.</p> <ul style="list-style-type: none"> As a collecting society they are better placed to handle they are better placed to handle the licensing of orphaned works. They welcome the regulation of collecting societies. The 5 year collecting license will lead to uncertainty in terms of negotiation and revocation. Bill does not address criminalisation of users' failure to properly report usage. | <p>Society should not be licenced for a specific time. This is contrary to licensing law. If there is no compliance a license can be revoked.</p> <ul style="list-style-type: none"> Private copy levy supported as reasoned above, but not for the purposes of fair use argument. Orphan works can be regulated in a licensing regime like in Canada: Proof of having traced the owner of the work is required before license is granted. |
| South African Guild of Editors (SAGE) | <ul style="list-style-type: none"> Represent a body of editors, sound designers and other post production professionals. The industry lacks sufficiently skilled professionals. S21(1)I prevents the exploitation of secondary and ancillary rights by independent producers. The new provision to leave the matter to the private contract and is not sufficient. The PC needs to amend the article so that a level playing field may exist for all in the content creation value chain. Editors should be considered to be a rights holder. | <ul style="list-style-type: none"> the dti supports that whoever produces a new "work" from the original should own IP on the new "work". |
| MNET/Multichoice | <ul style="list-style-type: none"> The Bill needs to be clear and implementable, concerned about the possible negative impact on the investment on film TV and production. There are different models for local production. MNet owns the copyright, if there is a co investment there can be co ownership. Specifics on the contract should not be legislated on. Where MNet bears all the risks and funds MNet wants the copyright. The | <ul style="list-style-type: none"> the dti does not support the view that setting minimum contractual terms will be unconstitutional-see the CRC report. the dti does not support the notion that technology encourages piracy. |

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| | <p>Copyright Bill may worsen the broadcasters' position by disincentivising investment in local content. Technology allows piracy, it is crucial that copyright goes further to help broadcasters fight piracy.</p> <ul style="list-style-type: none"> • The right of communication must be extended. The Bill is vague, has constitutional issues and attempts to regulate broadcasting. The powers of the Minister he is not allowed to prescribe local content only an independent body like ICASA. • The Bill gives the Minister wide ranging powers. These powers are unguided and should be deleted from the Bill. The Bill cannot legislate on contractual terms. In terms of the royalty payments by the user, who should pay the royalties, how must the royalties and the communication to the public right must be extended to the broadcaster. S21(1)I should not be amended. | |
| Recording Industry of SA (RISA) | <ul style="list-style-type: none"> • Believe and support limited exceptions .RISA played a critical role in the needletime rights. • The Bill will have a crippling effect on the industry. • Welcome ratification of the WIPO digital treaties and this is needed. Opposed to the provisions relating to contracts. Investment will decrease. The 50/50 split is not supported. The provisions of the WPPT should also be incorporated into the CAB. | <ul style="list-style-type: none"> • the dti does not support RISA's position on the 50/50 split. • the dti welcomes the support for the ratification of the digital treaties (WCT/WPPT). |
| Geof Kirby-Xrystal Productions | <ul style="list-style-type: none"> • Section 21(1) I highly discriminatory section towards photographers, photographers are not a collective and were lumped into this section. State of the South African photography in causing photographers to leave the country. • 192 countries in the world have changed the | <ul style="list-style-type: none"> • the dti proposes a principled position in commissioned work. Stakeholders must be treated equally. If judgement is supporting that the one who pays owns the copyright, changes in the law should be changed with or without a contract. This should be done |

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| | <p>legislation in terms of commissioned works for photography and South Africa is one of the 5 countries of the world who hasn't.</p> <ul style="list-style-type: none"> Photographers do not have enough money to sue. The definition of an author is also a problem. Everywhere else in the world photographer is defined as an artist. Photographers are not entitled to pay rights under authorship and cannot own copyright. Photographers do not have access to economic benefits. Canada changed the law in 2016. the dti must respond and account for the situation pertaining to photographers. (petition) | <p>consistently. Parliament can change commissioned work to belong to photographers.</p> |
| Media Monitoring Africa (MMA) | <ul style="list-style-type: none"> Welcome new fair a practical limitation, supports the Marrakech Treaty. Application of copyright in digital of social platforms. Take down notices are not sufficient. Definition of computer programme is problematic the Bill should be technologically neutral. Fair use supported, fair use supports journalism. Welcome the changes in the Bill, the Bill has made great strides. | <ul style="list-style-type: none"> the dti welcomes support for ratification of the Marrakech Treaty. Support the technological neutral approach. MMA supports fair use approach. |
| Independent Music Performance Rights Association (IMPRA) | <ul style="list-style-type: none"> Music sector is a sector is a sector within the industry. Transformation and economic development needed. Bill seeks to collapse all collecting societies into one. This goes against the freedom of association no transformation in the sector. The independents need to be considered. The Bill is seeking to prevent blacks and Africans and impeding competition law. | <ul style="list-style-type: none"> the dti does not welcome the approach that there should be a multiplicity of collecting societies. See the CRC recommendations (Ch6). |
| Cultural and Creative Industry Federation of South Africa | <ul style="list-style-type: none"> The copyright duration should be extended to 70yrs. Artists do not have confidence in the | <ul style="list-style-type: none"> the dti welcomes that collecting societies should collect only from members and monies |

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| (CCFISA) | <p>Collecting Societies. The law must change in terms of the collecting societies and only collect for registered members.</p> <ul style="list-style-type: none"> • the dti needs to look at collecting societies and enforce stricter regulation. • Mnet is blocking employment and the moral rights for performers are key. Performers sign away all their IP rights in perpetuity in the contracts. • The Bill stops expropriation of the non-reciprocal needletime. • Supports fully IOA incorporated into the license. Supports the introduction of the private copy levy and money should be used for the development of the creative industry. • Supports the 25 yrs. Assignment. Supports the new IP tribunal. Supports fair use as fair use favours artists. • the dti must force the CS to indicate what they doing with undistributed revenue. | <p>that are collected from non-members orphaned work is not used for developmental purposes.</p> <ul style="list-style-type: none"> • the dti supports stricter regulation of collecting societies. Non-compliance should result in the takeover by the Companies and Intellectual Property Commission (CIPC) and declaration of delinquency of directors of the collecting societies. • the dti supports that performers should not assign their rights in perpetuity. • the dti welcomes that there should be accountability for undistributed collections/monies. CIPC should really enforce the collective management of rights in order to protect the vulnerable. • Reversion clause supported and perpetual assignment of IP condemned. |
| Academic and Non-fiction Authors Association of South Africa (ANFASA) | <ul style="list-style-type: none"> • Sole Authors Association, promote and protect IPRs of authors in SA. Book publishing is strategic for book writers. • Good copyright law strikes a balance between economic interests of copyright owners and informational needs of society. • The CAB does not do this. The reluctance by the dti to ratify WIPO treaties is baffling. Only performers and visual artists benefit and not authors. • Do not support the fair use provision; remain with the current fair dealing provisions. The legal process will take too long and users will push fair use to the end. Copyright flexibility and economic outcome has yet to be proved. Clause 19 takes away moral rights from the | <ul style="list-style-type: none"> • the dti submits on the ratification of the treaties that ANFASA does not understand that there cannot be ratification before the Bill has been finalised. • the dti submits that the Bill intends to benefit all creators/authors/artists and all stakeholders in a balanced manner. • Fair dealing with five criteria has been repealed in Singapore, and therefore may need to produce a mixture of fair dealing/use. |

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| | <p>Bill.</p> <ul style="list-style-type: none"> Treaties should be ratified. Introduce the public lending right for authors and payment will be from Government. Provisions for education must be withdrawn. Fair dealing with the 5 criteria should be introduced. | |
| South African National Council of the Blind | <ul style="list-style-type: none"> Help us cut the chain.SA has a right to read. Low levels of literacy affect access to quality education. The miracle of Marrakech, treaty was adopted in 2013 and came into force in 2016. The Bill includes persons with disability follows the Africa position. Print disabled means dyslexia as well. The Bill provides for TPMs and cross border matters. Bill complies with the NDP. Supports the enactment of the Bill and ratification of the treaty, Bill will set up entities and will help this sector. Question for the dti explain the ratification process and why ratification to the Marrakech has taken so long. | <ul style="list-style-type: none"> the dti welcomes all submissions by the SANCA, but regrets that ratification of treaties such as digital treaties and Marrakech took so long. |
| International Federation of Film Producers Association | <ul style="list-style-type: none"> Supports the need to modernise the Copyright Act and ratification of WIPO treaties and the Beijing Treaty. Memorandum attached to the Copyright Amendment Bill is very important. The Bill is aligned to the National Development Plan. Developed audio visual sector can to contribute to employment and the economy. | <ul style="list-style-type: none"> the dti welcomes the support on the ratification of the WIPO digital treaties and the Beijing Treaty. |
| South African Guild of Actors | <ul style="list-style-type: none"> The Copyright Amendment Bill in its current format should not be passed as is (FEDUSA). It is flawed and may have unintended consequences. The Bill supports the objectives of the NDP by granting performers key economic rights. Contractual relationships are needed but | <ul style="list-style-type: none"> the dti agrees that actors and persons operating in the resale right collection should organise themselves under the collective management scheme. Accordingly the Bill will have to define the collecting society depending on the rights they manage. |

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| | <p>currently they are not fair process, No collective bargaining system.</p> <ul style="list-style-type: none"> • There is a mere once off symbolic payment. Mnet contracts cede all copyright, IP in perpetuity and irrevocably to the producer. There is no statutory basis to negotiate and the Bill introduces that. • The introduction of economic and moral rights. The CAB should define a CS for audio visual performers and both the CAB and PPAB need to be aligned. Consider amending the section on commissioned works S21(1)l. | <ul style="list-style-type: none"> • the dti welcomes the support on moral rights and economic rights as per the Beijing Treaty. • the dti supports the view that practice of perpetually assigning rights must come to an end. |
| South African Screen Federation | <ul style="list-style-type: none"> • Welcomes the dti amendment as producers and creators will be protected indefinitely. Copyright and related rights contributes to innovation. • Concerns are the limitation of assignment and restraint on contracts. State funded IP is also a concern but can be remedied by adding the words and. • The commissioned works section must also be amended or deleted as a whole; the producer should own the rights and not the broadcaster. Support Fair use and the submission of the DFA. | <ul style="list-style-type: none"> • the dti submits that limitation on assignment and contract is well founded. • the dti welcomes the support on fair use. |
| National Association of Broadcasters | <ul style="list-style-type: none"> • Supports the creative industries and rights to be paid as royalties. Supports the general aims and objectives of the Bill. • Local content is a competency of ICASA. • State funded IP provision contains undefined concepts, what are local and international organisations and what is the threshold for funding. • No room for negotiation with the State. Do not support the restrictions on assignment. State should have a commercial flexibility; the | <ul style="list-style-type: none"> • the dti submits that ICASA can be implementers on local content, but government through the CRC recommendations agreed on the policy direction. • the dti agrees that Artist Resale Right need to be restricted to visual arts and craft. |

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| | <p>provision makes SA look unattractive for copyright development. Clarity is sought on the orphan works provision, added wording to the definition.</p> <ul style="list-style-type: none"> • State should not acquire rights in orphan works where the owner has died. Artistic work definition is too broad for the artist resale right and therefore the Bill should define what works are applicable to the ARR. • Explain the clause 39 on unenforceable provisions of a contract. • In terms of translation licenses apply to the tribunal for a translation license, this does not allow the Copyright owner to deny access. | |
| <p>Library and Information Association of South Africa (LIASA)</p> | <ul style="list-style-type: none"> • The Berne Convention and TRIPS allow for exceptions. LIASA services the information sector. Support open access. Copyright trends in the world, shrink, restrict, strengthen, erode, create, monopolise and privatise. • World has a broken copyright system, therefore commends the dti on the amendment. No tangible benefits shown for the extending copyright to 70yrs. Supports the format shifting provisions on the Bill. • The Africa Group proposals for persons with disabilities are supported as included in the Bill. Bill is a positive step. Supports the fair use provisions. Australia and Canada moving towards fair use. • Supports limitations and exceptions as introduced in the Bill. Progressive and balance Bill. Fair use clause should be open, sometimes double payment occurs to DALRO and a lot of money goes out of the country. India supports course packs matter. • Welcome the cross border provisions of the Bill | <ul style="list-style-type: none"> • the dti supports the submission of LIASA, subject to the need to hybridise fair use and dealing. • the dti submits that protection of copyright limitation to 50 years after the death of the author was meant to benefit the society(public domain) earlier instead of 70 years. So South Africa should take a conscious decision on this matter. |

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| | <p>for persons with disabilities.</p> <ul style="list-style-type: none"> Orphan works can be protected by the fair use provision. The fair use provisions are supported by the DAC and DBE. Parallel importation supported as the provision will allow fair competition. | |
| Spoor and Fischer | <ul style="list-style-type: none"> Works of visual arts can be defined better. Fair use provisions are too broad and the same with State funded IP is too open ended. Do not support the fair use provision and the restriction on assignment what happened after the 25yrs. The provisions on orphan works are cumbersome. Copyright litigation is costly. | <ul style="list-style-type: none"> the dti submits that the process of registration of copyright is used in a country such as the US and is very expensive. This is not an international requirement and South Africa should stick to the minimum requirement of TRIPS. |
| American Chamber of Commerce in South Africa (AmCham) | <ul style="list-style-type: none"> Primary focus in US investment in SA. American companies employ South Africans, generates 10% of SA annual GDP. SA needs innovation. Authorship vs. Ownership debate and user rights are a concern as well as works funded by the State. What is control? The Bill must provide certainty. d Bill should be aligned to the IPR Act as the IPR Act benefits innovation. Do not support fair use quoted the money web case. | <ul style="list-style-type: none"> the dti agrees to reconcile the IPR Act and copyright regime. the dti submits that fair use/dealing may be a hybrid. |
| Innovus | <ul style="list-style-type: none"> Technology transfer is funded by the USA and AmCham. Support the DST white paper of 2017. Copyright is the more fundamental right that relates to innovation and not patents. Issues with the Bill are State funded IP, limitation of assignment and Inalienable authorial rights. Do not support fair use. The scope of artistic works must be limited. | <ul style="list-style-type: none"> the dti submits that limitation of assignment and inalienable authorship of rights need to be balanced with the investors interests. Investment and risk by the investor should not necessarily lead to total transference of IP to the investor. Issues of fair use/dealing maybe solved by the hybridisation. |
| South African Regional Universities | <ul style="list-style-type: none"> SARUA commends the dti on the new Bill and | <ul style="list-style-type: none"> the dti notes the need to restrict resale royalty |

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| Association (SARUA) | <p>its endeavour to redress the serious shortcomings of the current Copyright Act 98 of 1978 which has always created barriers for education, research and innovation. Supports the Bill's fair and balanced provisions for education, research and people with disabilities.</p> <ul style="list-style-type: none"> • The provisions for libraries, archives, and museums, including digitisation, format shifting, and protection and preservation of collections, including cultural heritage. Prefer use rights-owner to author. Current fair dealing provision in the Principal Act is restrictive. Supports an open fair use provision and the inclusion of the words "such as" to the new fair use provision in the Bill. Supports an open quotation provision in the Bill and adding of a comma to the text. • Commends the dti for the introduction of the Artist Resale Right and should only apply to commercial galleries. Supports orphan works to be dealt with under the fair use provision. The bill needs to include provision on data and text mining. | <p>to commercial galleries and the secondary markets.</p> <ul style="list-style-type: none"> • the dti supports the need to provide for data and text mining. |
| Free Market Foundation (FMF) | <ul style="list-style-type: none"> • The Bill violates the rule of law in S11 of the Constitution, this section requires law to be unambiguous. The Bill does not recognise the applicability of S25 of the Constitution (the right to property). • The Bill operates on the assumption that the property clause does not apply to Intellectual Property. Supports the submission of the Anton Mostert IP Chair. • Does not support the introduction of the fair use provision. Cannot use both terms and the dti must make clear its intentions with fair use. | |

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| | <ul style="list-style-type: none"> • There is no evidence that copyright law is an impediment to education. | |
| Aspire Art Auctions | <ul style="list-style-type: none"> • Currently, visual artists benefit from a legislated Artist's Resale Right (ARR), originally known as a droit de suite (literally, 'right to follow') in 80 countries around the world, largely following provisions in the Berne Convention. • The ARR provides an intellectual property right for artists to benefit via royalty payments on the sale of their works in the secondary markets. In some countries the right extends to the estate, heirs and foundation of the artist, enabling a sustainable approach to the heritage of these particular artists. Currently there is no legislative framework for ARR in South Africa, though this has been mooted by the existing Copyright Amendment Bill for 5% of work sold in the secondary market. Aspire introduced their own Artist's Resale Rights effective immediately from its inaugural auction in Johannesburg in 2016. • The in-house scheme offers a sliding scale of royalties on the current European model, and is only offered to living artists, not to estates, heirs or foundations. In the absence of a legislative framework, and unlike other countries, where collection agencies are established by law, South Africa currently offers no legislative provision for the work of its artists to attract royalties from secondary market sales, and the current provisions in the Bill have little by way of implementation detail or detail on which agencies would collect royalties and how. Call for an urgent amendment to the existing legislation under | <ul style="list-style-type: none"> • the dti supports Aspire's submission on the resale royalty in secondary markets. • the dti notes the private arrangement in the collection and distribution of royalties to visual artists however we would like to move to a legislated environment. • Parliament should pronounce on the sliding scale or fixed rate method of calculating royalties. |

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| | <p>discussion to include the provision and extension of royalty rights to visual artists for sales of their work in the secondary market, and its proper implementation and administration by a legislated, independent and industry-specific agency or agencies.</p> | |
| Australian Digital Alliance | <ul style="list-style-type: none"> • Commend the dti the South African Government on the 2017 Bill particularly the provisions for libraries, archives, galleries, education and academic activities and for people with disabilities. • an open fair use provision the current fair use provision is limited. • Support an open quotation provision current provision limits authors and researchers who need quotes. | <ul style="list-style-type: none"> • the dti welcomes the support on the Bill dealing with disabilities and open fair use. |
| Centre for Health Innovation and the Public Interest (CHIPI) | <ul style="list-style-type: none"> • Submission endorsed by SECTION 27. The Copyright Act 98 of 1978 prohibits blind and visually impaired people from using copyright material. • Permission must be given under the Principal act for a book to be made legible for a blind person. If the copyright owner denies permission there is no right of recourse. • Blind people only have access to a small fraction of material. • Cited applicable sections of the Constitution that are applicable to the disabled community- 7, 9, 16, 29 and 38. • Both the Berne Convention and the TRIPS Agreement allow various copyright exceptions and limitations- permitted under copyright law for decades. • The Marrakech treaty aims to bring to an end the “ book famine” by providing exceptions and limitations. These exceptions allow for the | <ul style="list-style-type: none"> • the dti welcomes the support received regarding the blind people. • the dti welcomes in particular the clear support on International exhaustion of Intellectual Property. It is consoling to hear that the TRIPS Agreement and International limitations and exceptions are in tandem with the Constitution. |

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| | <p>making of accessible copies of published works without the permission of the copyright holder and allows for the cross border exchange of accessible format copies of printed works.</p> <ul style="list-style-type: none"> • The Copyright Amendment Bill contains an exception that authorises reformatting of books. • The proposed amendments in the Bill are welcomed. • Supports the international exhaustion regime introduced in the Bill. (first transfer of a copy of a work exhausts importation and distribution) • Section 19D of the Bill elegantly provides for copyright exceptions and limitations as envisaged in the Marrakech Treaty. • Bill will allow blind people and visually impaired to access more books. • Critical element of the Bill is the cross border sharing of accessible format books. • Recommend the insertion of commercial availability. | |
| Dr L Tong | <ul style="list-style-type: none"> • The Bill not only amends the Copyright Act 98 of 1978 but introduces new rights into the South African Copyright Law-from other jurisdictions and international instruments. • Absence of a detailed memorandum. • Comments are limited to the following three areas; (1) the State's right to ownership of Copyright, (2) the right to royalties and (3) the resale royalty right. • The Bill needs to indicate the relationship to the IPR Act. | <ul style="list-style-type: none"> • the dti agrees that the resale right should be restricted to the works of fine art. |

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| | <ul style="list-style-type: none"> • How will the State deal with being the owner of Copyright? • What would constitute funding for the purposed of the Bill? • This provision in the Bill is not aligned to the commissioned works section. • The Bill creates a right to royalties-proviso is nonsensical. • User cannot get a royalty for using the work. • The resale royalty right is a mechanism to ensure that authors of works share in the profits of subsequent sales of the original work. Most commonly applied to works of fine art. • Clarity on the provision and who is responsible to pay the royalty and how will the system be administered? | |
| Electric South Africa | <ul style="list-style-type: none"> • Comments are limited to sections of the Bill which impact on the freedom to expression and the freedom of media in particular. • The Bill fails to strengthen the provisions of incidental use of materials required in virtual reality recordings. • Section 15(1) of the Principal Act is unduly restrictive. Fails to authorise the use of audio visual works, photographs or performances. • Follow the EU directive on Copyright Article 3. • The current panorama right is unduly limited. | <ul style="list-style-type: none"> • the dti agrees that Panorama should be amended to remove the grey area and make the provision workable. |
| Gauteng Province Sports, Arts, Culture and Recreation | <ul style="list-style-type: none"> • Libraries play a vital role in community development, supporting learning opportunities, facilitating lifelong learning, complementing formal education systems and expanding the learning capacity of local communities. • Express humble appreciation and gratitude for the inclusion of the general exceptions regarding protection of copyright work for | <ul style="list-style-type: none"> • the dti notes submission on fair use. |

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| | <p>libraries, archives, museums and galleries in the CAB.</p> <ul style="list-style-type: none"> • Positive and progressive step in empowering the library fraternity to deliver on its core mandate. • The introduction of the fair use provision is still too restrictive and prefer for the provision to be more open. | |
| Jade Kouletakis | <ul style="list-style-type: none"> • Commend Parliament on the drafted, revised Copyright Amendment Bill 2017. The Amended Bill is a vast improvement on the prior Bill. In particular, there must be commendation for changes such as state ownership in orphan works, perpetual state ownership, and so on. • These provisions are highly commendable indeed (definition of accessible format and person with a disability). The broad nature of the definition, whereby it encompasses disability of all types (e.g. visual impairment as well as hearing loss, similar to the case in Israel), means that the most marginalised sections of society shall be able to benefit from the Amended Bill regardless of the nature of their disability. Thus, unlike the case whereby the political weight preceding the Marrakesh Treaty limited its application to those with visual impairments, South Africa’s decision to broaden the scope and be more inclusive is surely a hallmark of distinction. • Article 5 of the Amendment Bill is problematic. The Amendment Bill does not define what is meant by ‘state funding’. This provision appears similar to the Intellectual Property from Publicly Financed Research and Development Act 2008 (IPR Act), which | <ul style="list-style-type: none"> • The submission is noted. |

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| | <p>expressly excludes works such as thesis, articles and similar publications (i.e. works which would be considered such for the purposes of copyright). Is the inclusion of 'funded by' in the Amended Bill to be taken as expanding the spirit of the IPR Act to include such works where the creator is publicly financed, thereby amending said legislation? How are the IPR Act and Amendment Bill be read together?</p> <ul style="list-style-type: none"> • In South Africa, it is clear that the system adopted is one of fair dealing, which is also clear from the phraseology of the Amendment Bill. Utilising a system of fair use would, it is proposed, lead to a host of socio-political issues given the realities of South Africa. The use of the term fair use ought to be omitted and replaced with the correct, appropriate term of 'fair dealing' throughout the Amendment Bill. • It is important to note the difference between an author and a copyright owner. It is the copyright owner who is vested with the ownership rights in the work, and as such it is the copyright owner whose permission ought to be acquired in such instances save for exceptions such as the ones previously mentioned. This is distinct from the author of a work, who may not be the same person as the copyright owner (e.g. authors working under a contract of employment as per <i>King v SA Weather Services</i>). This oversight is noticed across the entirety of the Amendment Bill, and must be remedied | |
| International Federation of Reproduction Rights Organisations | <ul style="list-style-type: none"> • Endorse the PASA and DALRO submissions. • Congratulates the South African Government on deciding to put into place the WIPO treaties | <ul style="list-style-type: none"> • the dti welcomes the support on the ratification of WIPO treaties and resale royalty scheme. |

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| | <p>and is pleased with the introduction of a resale royalty scheme.</p> <ul style="list-style-type: none"> • Concerned about the wide and unremunerated exceptions for libraries and private copying. • These exceptions will put South Africa in breach of its existing Treaty obligations under the Berne Convention. • Submits that the provisions dealing with exceptions, fair use and reproduction for education and libraries, private copying, translation license and orphan works be withdrawn. • Concerns over the lack of an impact assessment. • The Bill should rather opt for flexible licensing options and in the absence of a licensing solution an exception can be applied. • Support introduction of a license override provision. • The wide and unremunerated use permitted by the exceptions under article 12 of the Bill breach the 3 step test of the Berne Convention. • The CRC considered both the negotiated tariff and the commission charged by DALRO to be acceptable. • Not in support of the private copying exception. • Although private copying is permitted in a number of countries it is remunerated by a levy system. • Support the introduction of a private copy levy. • Do not support the exceptions for libraries as contained in article 18 of the Bill. • Do not support the introduction of the fair use provision. • Supports the ratification of the Marrakech | <ul style="list-style-type: none"> • the dti's intention is not to conflict any international treaty that SA Government is a member. |
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| | <p>Treaty.</p> <ul style="list-style-type: none"> Concerned about the provisions on Orphan works and translation licenses. | |
| Loyala University Chicago School of Law | <ul style="list-style-type: none"> Commends the progress on the CAB. Further refinements will significantly benefit the technology sector without prejudicing the interests of authors and owners of copyright works. Under the current Copyright Act; machine learning, cloud computing, text mining, plagiarism detection, automated detection of copyright infringement and constructing search engine indexes are unlawful. Copyright laws can slow down innovation. Either have a specific statutory exception relating to non-expressive use (open fair dealing clause) or an open fair use clause. Recommend the words “such as” to be added to the fair use provision to allow it to be open. Variety of benefits and technological advantage. | |
| Musicians Association of South Africa | <ul style="list-style-type: none"> Member of the Copyright Alliance and support the submission of the Copyright Alliance. 2015 version of the Bill contained local content quotas and has been removed in the 2017 Bill, this is regrettable. | <ul style="list-style-type: none"> Recommended drafting noted. The CRC recommendation was an 80% local content quota for public radio stations (broadcasters) and 60% for private radio stations; this is still supported by the dti and the Presidential Task Team. The tariff of the needletime also needs to be addressed adequately to ensure a successful implementation of the quota as well. Currently South Africa has one of lowest tariffs in the world at 3%. |
| National Film and Video Foundtion | <ul style="list-style-type: none"> Welcomes the revision of the Copyright Act which is long overdue. | <ul style="list-style-type: none"> Noted the good submission of the NFVF. |

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| | <ul style="list-style-type: none"> • Technological developments have changed how creative content is created. • “accessible format” and “person with a disability” welcomes the efforts of the dti towards a fair access and protection. This format access will increase accessibility to audio visual formats. • Welcomes the new definition of “audio visual fixation”. • The definition must appear in both the Copyright Amendment Bill and the Performers Protection Amendment Bill and not only in the Performers Protection Amendment Bill as it currently is. • The Bill amends the definition of commercial it is recommended that clarity on the terms commercial resale and commercial exploitation also be given as they will have an impact on the market. • Welcomes the new definition of performer however again the definition needs to appear in both Amendment Bills and not only in the Performers Protection Amendment Bill. This is a broad and global definition and supported as it brings amateurs into the realm. • Welcomes and supports the addition of a fair use clause that would prevent unreasonable application of the Copyright protection. • The extension of the royalty right is a concern as it changes current structure of audio visual work. • Supports the amendment of Section 20(1) and 20(2) of the Act and welcomes the protection of the author in respect of audio visual fixations. • Concern over commissioning works Section 21 | |
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| | <p>of the Act, commissioning parties by default receive exclusive licenses and repeats of the work. Rights that the commissioning party does not intend to exploit should also revert back to the author.</p> <ul style="list-style-type: none"> • Welcomes mechanism of assignment for orphan works but the process is too onerous. Request an easier process. • Welcomes the provision of mechanisms for a translation license and a reproduction license. • Audio visual works should be included under works eligible for protection under Section 2 of the Act and needs be included under Section 3 and 4 of the Act. • Establishment of a Copyright Registration Bank-relates to filmmakers for protection of their work as it is regulated by contract. This can be an additional measure available to the creative industry. | |
| <p>Michael Palmedo (American University Washington College of Law)</p> | <ul style="list-style-type: none"> • Program of Information Justice and Intellectual Property, research indicates that positive economic outcomes are associated with openness in copyright limitations. • Open is defined as open to the use of any kind of work, by any kind of user as long as the use does not prejudice the legitimate interests of the author. • 4 findings of the research: high technology industries that South Africa is seeking to develop enjoy improved outcomes with a more open copyright law; firms in publishing and entertainment are not harmed by open copyright law; open copyright law produces high quality research and benefit for middle income countries through their information technology and research sectors. | <ul style="list-style-type: none"> • the dti notes the submission. |

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| | <ul style="list-style-type: none"> • These findings support the changes in the Amendment Bill. • Supports an open fair use clause and to include specific user rights in transformative uses and non-expressive technical uses. • Many industries rely on exceptions and limitations to operate which drives new jobs and growth. • All copyright laws include limitations for certain uses of copyrighted materials when such uses are deemed fair to the right holder and useful for users and society. • Every member of the Berne Convention is required to have an exception for quoting copyrighted works. • Graphs in submission indicates that increasing openness does not negatively affect revenues of the book publishing, music publishing and movie production firms but there is a significant positive relationship with between openness and revenues in these firms. • Openness in copyright limitations is associated with more scholarly output and higher quality scholarly output. Graphs indicated on submission. | |
| <p>Peter Jaszi (American University Washington College of Law)</p> | <ul style="list-style-type: none"> • Copyright laws must incorporate balanced limitations and exceptions in order to ensure access. • The Bill fails to strike an appropriate balance between protection and creative freedom. • The new fair use provision in the Bill makes no clear allowance for the needs of artists. • Supports an open fair use provision and an open quotation provision in the Bill as in the 2015 version of the Bill. • Sectors that can benefit- visual arts, non-fiction | <ul style="list-style-type: none"> • the dti notes the suggested drafting language and will be considered when the Bill is being improved. |

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| | <p>filmmaking, dance, poetry and user generated content.</p> <ul style="list-style-type: none"> • Delete the words “the following” and add the words “such as” to the fair use provision. | |
| Puku Children’s Literature | <ul style="list-style-type: none"> • Supports the submissions of ANFASA, PASA and DALRO. • Welcomes the amendment to update the Act and ratify International Treaties. • Opposed to the fair use provision of the Bill. • Insertion of 28(P) and 28O(6)-will ensure that rights holders of literary works stand to benefit from use of their works on digital platforms and protect them from piracy. • Exceptions for education are too broad and not a solution for access to information. | <ul style="list-style-type: none"> • No recommendation of what a narrow scope is and how PASA, ANFASA and DALRO within their business models can promote the publishing of indigenous works rather than equate the fair use provision to not making these types of works viable for publishing. |
| International Confederation of Societies of Authors and Composer (CISAC) | <ul style="list-style-type: none"> • Provisions that fix the term of validity of the copyright assignment should not apply in respect of assignments between rights holders and accredited collective societies that permit the reversion of copyright to rights holders at the termination of membership (Section 21(b)). • In the provisions contained in Sections 6, 7, 8 and 9, the role of various parties in the copyright value chain should be conveniently rectified in order to exclude some categories (“users, producers, community trusts”) from being entitled to sharing on a royalty. • The right of communication to the public should be reformulated based on the definition laid out in international treaties (Section 7(dA)). • The definition of orphan works should include the requirement of a diligent search before a work can be considered to be as such (Section 1(f)). • Usage information in respect of copyright works is fundamental to ensure that royalties are fairly distributed among rights holders. | <ul style="list-style-type: none"> • Noted the submission for consideration. |

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| | <p>Legislation should be amended to compel users to submit music usage reports (Section 22(D)(2)).</p> <ul style="list-style-type: none"> • Provisions that attribute to the “State, international or local organisations” the ownership of works made by or under the direction or control of such entities should be limited to a closed list of specific category of works. Furthermore, the inclusion of any “local organisation” would have a very dire effect on the livelihoods of rights holders and should be deleted (Section 5(2)). • CISAC encourages the introduction of a private copying levy to ensure that copyright holders are duly compensated for acts of copying that are done by individual persons and for private use. • Reversionary provisions should not apply to assignments between rights holders and accredited authors’ societies. • Role of various parties in copyright value chain should be conveniently rectified. • Right of communication to the public should be reformulated according to definitions laid out in international treaties. • Definition of orphan works should include the requirement of a diligent search. • Users should be compelled to provide usage reports. • Provisions that attribute ownership of works funded by such entities to “State, international or local organisations” should be rectified. • A private copy levy mechanism should be implemented. • Supports the ratification of the WCT. | |
| International Publishers Association | <ul style="list-style-type: none"> • Support the PASA submission. • Support ratification of the WCT and the | <ul style="list-style-type: none"> • Noted the submission for consideration. |

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| | <p>Marrakech Treaty.</p> <ul style="list-style-type: none"> • Do not support State funded clause. • Do not support Fair Use. • No benefit for the compulsory license of translation of copyright works although allowed by the Berne Convention. • Do not support the one collecting society per set of copyright rights. | |
| <p>Institute of Race Relations NPC</p> | <ul style="list-style-type: none"> • Under the Copyright Bill, the current Copyright Tribunal is to be replaced by a new Intellectual Property Tribunal (the IP tribunal). • As noted, the present Copyright Tribunal consists of the commissioner of patents. This means that he is also a High Court judge and enjoys all the usual institutional protections aimed at safeguarding the independence of the Bench. He is also expected to have specialist knowledge of intellectual property matters, which is why he presides over the Patents Court as well. • The tribunal is to be entrusted with “hearing appeals or reviewing any decisions” of the Companies and Intellectual Property Commission. This commission is appointed by the minister of trade and industry under the Companies Act of 2008, and its function is primarily to oversee company registrations and other aspects of corporate governance. However, the commission is also responsible for granting applications for patent rights under South Africa’s current system, which allows the granting of such rights (without a prior process of objection and adjudication) provided the application prima facie meets all relevant requirements. The IP tribunal will thus have a wide and seemingly untrammelled power to set | <ul style="list-style-type: none"> • Noted the submission for consideration. |

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| | <p>aside the granting of patent rights by the Commission – a power which currently rests with the patent court and can be exercised only in specified circumstances.</p> <ul style="list-style-type: none"> • New Tribunal is unconstitutional. • No SEAIS on the Bill. | |
| Reddam House | <ul style="list-style-type: none"> • Pleased with the limitations and exceptions in the Bill for teaching and learning, libraries, archives, museums and galleries, and for people with various disabilities. The current Copyright law is so restrictive and outdated. These new provisions will facilitate access to information in South Africa and improve our teaching and use of copyright material in the future. We are also glad to see the introduction of 'fair use' but notice that there is a limited list of permitted acts. We believe that 'fair use' should be open to allow for unforeseen uses and technological changes in the future. Also, the provision for quotation in Section 12 needs to be open. • The current provision in the Bill is very limiting and will have a negative impact on writing, research, teaching, language studies, expression, speeches, newsletters, etc., and production of knowledge in general. • 'orphan works' need to be addressed under 'fair use' provisions. They should not be owned or controlled by the State. | <ul style="list-style-type: none"> • Noted the submission for consideration. |
| South African Writer's Circle | <ul style="list-style-type: none"> • The Fair Use provision should be open like the US. • Open the quotation provision. • Text, data mining and transformative purposes to be included in the Bill. | <ul style="list-style-type: none"> • Notes the submission for consideration. |
| SASOL | <ul style="list-style-type: none"> • Supports the intention of the Bill. • Clause 3 of the Bill ownership of funded | <ul style="list-style-type: none"> • Notes the submission for consideration. |

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| | <p>copyright is not supported. Lack of clarity of the meaning of words in the clause and alignment to the IPR Act.</p> <ul style="list-style-type: none"> • Proposal: align the wording to the wording in the IPR Act. • Artist Resale Royalty is too broad and should be narrowed to cover only the categories of artists who are intended to be covered by the Bill. • Supports the introduction of the Intellectual Property Tribunal. Does not support this amendment in the Copyright Act. • Supports the Joint Academic Submission of 2015 and the introduction of the fair use as per their submission and the clause 2015 Bill as this is convincing and practical. | |
| Strauss & co | <ul style="list-style-type: none"> • Same comments submitted as 2015. • Resale royalty should be reconsidered. • Fair Use not supported. • The Draft IP Policy of 2013 did not address the ARR right. | <ul style="list-style-type: none"> • Notes the submission for consideration. |
| PEN Afrikaans and PEN South Africa | <ul style="list-style-type: none"> • Welcome the proposed addition of the right of communication to the public as an exclusive right of copyright. The right of communication to the public is considered the equivalent of the reproduction right in an internet environment. As such, its inclusion represents an important step towards bringing South Africa's copyright legislation in line with the digital era. PEN Afrikaans and PEN South Africa urge the Committee to also introduce the exclusive right of distribution. • Fair use not supported. • The Bill proposes that copyright in state-funded works shall automatically vest in the state. The level of funding is not defined. It | <ul style="list-style-type: none"> • Notes the submission for consideration. |

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| | <p>would be unreasonable for the state to appropriate copyright works as a result of any form of funding.</p> <ul style="list-style-type: none"> • Intention to prescribe “compulsory and standard contractual terms to be included in agreements to be entered in terms of this Act”. This overbroad wording will affect the author’s ability to exploit the fruits of his or her labour through licensing agreements. Deeming contractual terms unenforceable if they aim to restrict the wide-ranging exceptions and limitations to copyright will also hamper the author’s ability to commercialise his or her work. • Section 19 of the Bill proposes to amend Section 20 of the Act which deals with the author’s moral rights. The proposed amendment deprives authors of the opportunity to enforce their moral rights when any of the copyright exceptions and limitations apply. This limitation is unwarranted and should be removed forthwith. | |
| Uhuru Productions | <ul style="list-style-type: none"> • Supports an open fair use clause in the new copyright act, like they have in the US. • Supports transformative use right. | <ul style="list-style-type: none"> • Welcomes the support for fair use. |
| Universities South Africa(USAF) | <ul style="list-style-type: none"> • Represent 26 public universities in SA. • Support ratification of the Marrakech Treaty. • Supports the limitations and exceptions in the Bill for libraries, archives and galleries. • Supports and open Fair Use clause. • Support the protection of orphan works under the Fair Use provision. • Supports the digitisation of the legislation. | <ul style="list-style-type: none"> • Notes the submission. |
| Visual arts network South Africa | <ul style="list-style-type: none"> • Supports the Artist Resale right and commends the objectives of the Bill. • The rate needs to be developed. | <ul style="list-style-type: none"> • Notes the submission. |

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| | <ul style="list-style-type: none"> • An adequate frameworks for a collective agency needs to be established. • Proposes the model of the British or Australian legislation as it is functional. • Concerns over the role of CS in the Bill, visual arts do not have strong royalties' collection and many may not join a CS. • The ARR does not affect the market sales for works. • ARR does not only benefit well known artists. • The administration of ARR is not complex or taxing on resale companies. • 5% rate can have an impact. | |
| Music Publishers' Association of South Africa | <ul style="list-style-type: none"> • Supports submissions made by the Copyright Alliance. • Supports no amendment to the commissioned works section of the Act. • Does not support the user royalty and this error in drafting should be corrected. • Supports the current fair dealing provisions to remain. • Collecting Societies should collect for Orphan Works. • There should no copyright exception for copying. • Does not support the limitation of assignment to 25 years. | <ul style="list-style-type: none"> • Notes the submission. |
| Section27 | <ul style="list-style-type: none"> • In 2015 made suggestions to the amendment of Section 2 of the Act these suggestions were accepted and recommend that the amendment is supported and remains. This amendment removes barriers to the registration of generic medicines. • Use the correct terminology in Section 29 C from mental defect etc to intellectual disability. | <ul style="list-style-type: none"> • Notes the submission. |
| South African Library for the Blind | <ul style="list-style-type: none"> • The Copyright Act No.98 of 1978 makes no | <ul style="list-style-type: none"> • Notes and appreciates the submission. |

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| | <p>provision for exceptions or limitation to allow blind and visually impaired people reasonable and equitable access to reading material.</p> <ul style="list-style-type: none"> • The SALB is therefore pleased to note that the Copyright Amendment Bill contains provisions that will address this as well as other challenges. • In many sections of the Bill, including those relevant to people with disabilities, the word “author” is used instead of rights-owner. In most instances, authors assign their rights to third parties, e.g. editors, publishers, etc. • Recommend where reference is made to author instead of rights-owner, it should read as follows: ‘rights-owner’, or ‘rights-owner and/or author, as the case may be’. | |
| Ster-Kinekor Theatres | <ul style="list-style-type: none"> • The legislative amendments go beyond on the CRC recommendations. • Not in support of a resale royalty. • Draft IP Policy of 2013 did not discuss any resale royalty. • The Bill should be reviewed, corrected and improved. • The user royalty right will affect the business of Ster-Kinekor negatively. • Bill needs to take cognizance of those who make unauthorised copies of the movie from devices while in the cinema. Section 8 of the Act needs to go further and add devices etc. • Although Clause 6 of the Bill is improved and addresses some part of the problem it needs to go further. • Regulatory framework for collective management is too complex. • The limitation of assignment to 25 yrs/reversion clause should be cancelled in the | <ul style="list-style-type: none"> • Notes the submission. |

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| Library Copyright Alliance | <ul style="list-style-type: none"> • We commend the South African government on the proposed exceptions for libraries, archives, museums and galleries (section 19C); persons with disabilities (section 19D); and educational activities (section 13B). Long experience in the United States with similar provisions indicates that these exceptions will significantly benefit the citizens of South Africa without harming the interests of domestic and foreign copyright holders. • The fair use provision in section 12 should be open-ended, and not limited to the eight purposes enumerated in section 12. • A comma inserted in the quotation exception in section 12A(1)(a) after the word “periodical” should be removed. The addition of this comma completely changes the meaning of this provision, restricting the use of the quotation exception to summaries of works. • the orphan works issue would be better addressed within the • Framework of fair use than by the statutory license proposed in section 22A. Libraries, archives, and museums in the United States routinely rely on fair use to digitize works in their special collections that likely are orphan works. | <ul style="list-style-type: none"> • Notes the submission. |
| International Federation of Library Associations and Institutions (IFLA) | <ul style="list-style-type: none"> • Call the Parliament’s particular attention to the general exception in Section 12 of the Act that refers to fair use and fair dealing, to the exception about quotations (Section 12A), to the exception for orphan works (Section 22), as well as underline some of the most positive current provisions. • Welcome the amendment to the general fair | <ul style="list-style-type: none"> • Notes the submission. |

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| | <p>dealing exception to turn it into a fair use exception, a system that has proven its benefits in other countries where copyright functions under this general principle. However, while this step does allow for a considerable increase in the number of permitted uses of works under this umbrella, we consider that a non-exhaustive list would be more advantageous to South Africa, to its creators, researchers, companies and to access to culture globally.</p> <ul style="list-style-type: none"> • A broader fair-use exception as described above would allow cultural heritage institutions to serve their users better, for instance by enabling them, in their educational activities, to illustrate arguments and points with historical political pamphlets or with audio-visual materials. • Support an open quotation provision as well. • Support orphan works under Fair Use. • Welcome the introduction of an exception that gives the possibility for users to use a circumvention measure to perform an act that is allowed under an exception. This is an important provision for cultural heritage institutions, since it can affect a large amount of digital content that is legally acquired and that can legitimately be used. • We are also very supportive of the provision that recognises the unenforceability of contractual terms that override exceptions to copyright. This will help solve the recurrent problem that licensed-based agreements often contain provisions that limit the possibility that exceptions to copyright. • Proposals concerning libraries and archives | |
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| | <p>(Section 19) particular positive, notably the lending of e-books, the possibility to supply documents digitally, the making available of collections on secure computer networks, the limitations of liability and the provision on out of commerce works. If adopted, they will help to notably improve the public service that libraries offer.</p> <ul style="list-style-type: none"> • Welcome the provisions on open licensing (Section 13B), allowing authors whose published works are publicly financed to make their contributions available to the public after a certain period of time. • Welcome provisions that implement the Marrakesh Treaty into South African legislation. In this regard, we would like to suggest a minor change in Clause 19(D) 1 and 3 that consists of changing the term “author” for “rightsholder” in the first sentence (“any person may, without the authorisation of the author”). | |
| <p>AmaBhungane Centre for Investigate Journalism (amaBhungane)</p> | <ul style="list-style-type: none"> • Supports an open quotation clause by removing the comma. The placement of the comma after the word “periodical” results in the quotation exception only applying to those, which are in the form of a summary of the original. The current law only applies this qualification to a non-exclusive reference (“including”) to summaries of “articles in a newspaper or periodical.” • Support and open Fair Use provision. • Propose that the quotation right be included within the fair use right proposed for Section 12 of the Act. Proposed Section 12 proposes a fair use test with a well-considered set of factors to be considered in determining the fairness of various unlicensed uses of content. | <ul style="list-style-type: none"> • Notes the submission. |

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| <p>Legal Deposit Committee</p> | <ul style="list-style-type: none"> • Request amendment to the definition of ‘technological protection measure circumvention device’ – We recommend this term be deleted and wherever it is used in the Bill that it be changed to ‘anti-circumvention device’. • Request amendment to the wording of ownership by the State- recommend that the section be amended to read as follows:- • "Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by, or made and funded under the direction or control of, the State. . ." • Alternatively, we recommend that, such works should rather form part of the public domain so they are free for use by all, and can be collected and preserved by Legal Deposit libraries. This should be limited to works made by, or made and funded under the direction or control, of the State, and not in cases where the State merely funds them, for example, at research institutes or higher education organisations. • The provisions of fair use are limited and exclusive, which means that unforeseen, transformative uses, and/or future unknown or not-yet-thought-of uses are not considered or permitted. • Support an open Fair Use provision. • Support an open quotation provision. • The provisions for authors’ resale rights are impractical, too broad in scope and will include many orphan works. This right should be restricted to commercial galleries, exhibitions and auction houses. • Support Orphan Works being dealt with under | <ul style="list-style-type: none"> • Notes the submission. |
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| | <p>Fair Use. Section 19C(9) and/or Section 12 fair use provisions would facilitate, not hinder or prevent, access to information.</p> <ul style="list-style-type: none"> • Section 27 – Technological Protection Measure. This section needs to be refined for clarity and the grammar corrected. • Where reference is made to author instead of rights-owner, it should read as follows: ‘rights-owner’, or ‘rights-owner and/or author, as the case may be’. • The following should be included in the amendments: Text and data mining provisions, Section 15(1) of the principal Act of 1978 – Incidental Capture • An amended version of Section 15(1) needs to be included in the Bill. The current provision in Section 15(1) of the principal Act of 1978 is unduly restrictive. • Right of Panorama should be included. • Recommend that Section 28P. (4) be added as follows: 28P. (4) Anyone who assists and/or enables another person to circumvent a technological protection measure for the purpose of exercising an exception as provided in this Act, is indemnified from any prosecution or liability in relation thereto. | |
| Denise R. Nicholson (personal capacity) | <ul style="list-style-type: none"> • Commend the Department of Trade and Industry for publishing the first draft of the Copyright Amendment Bill in 2015 and now the recent 2017 Bill. Pleased to see the Bill includes limitations and exceptions for libraries (including legal deposit libraries), archives, museums and galleries. These flexibilities will enable these key institutions in the chain of knowledge collection, sharing and preservation, to carry out their statutory | <ul style="list-style-type: none"> • Notes the submission. |

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| | <p>mandates and provide their services efficiently and effectively to our nation.</p> <ul style="list-style-type: none"> • Recommends the improvement of certain definitions and inclusion of other definitions.(refer to document) • Not in support of ownership by the State. • Supports open Fair Use provision. • Supports an open quotation provision. • This correct term is “Artist’s Resale Right”. This section is impractical, too broad in scope and will include many orphan works. The right should only apply to commercial galleries, exhibitions and auction houses, as is the case abroad. • Support format shifting provision in the Bill. • Clarity on the 25yrs assignment is sought is it a min or max period? • Technological Protection Measure (correct term) this section needs to be refined for clarity. The grammar is incorrect and the whole section is not easy to understand as the language does not flow easily. • In many sections of the Bill, including those relevant to people with disabilities, the word “author” is used, sometimes with a list of others (including user, which should be deleted), instead of the term “rights-owner” being used. Where copyright is most likely to have been assigned to a third party, the correct term to use would be ‘rights-owner’. • Support the attached NCLIS document, including the provisions for text and data mining; perpetual copyright on unpublished works; incidental capture and right of panorama. | |
| Department of Science and | <ul style="list-style-type: none"> • Concerns in relation to the IPR Act and IKS Bill | <ul style="list-style-type: none"> • The DST submitted written comments in 2015 |

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| <p>Technology (DST)</p> | <p>How the CAB affect the IKS Bill.</p> <ul style="list-style-type: none"> • Brief history given regarding how IK Policy of 2004 came into being and the mandate of each Department regarding IK. • The National Recordal System is the entry point for IKS. • Brief description of what IP is. • The IPR Act all recipients of public funding received from a funding agency who use these funds to conduct R&D. • Copyright Management Information definition-creates an impression that all meta data is copyright management information. • Clause 2A(4) of the CAB no protection shall extend to an expression. The concern is that the subsection will be misinterpreted with the IKS Bill which grants protection to cultural expressions of folklore. • Clarity requested on the terminology extend to an expression given that copyright does not exist prior to the creation of an expression. • The concern on Clause 3 of the Bill is that IKS is not defined and neither is state funding this creates a disjuncture and that the rights will not translate into patents. Recommendation that the words funded by not introduced into the section. • User rights Clauses 6,7 and 8-IK communities will be allowed to claim an equal portion of the royalty. Recommend that the word equal be removed from the sections. • Artist Resale right lack of understanding of what resale is for IK communities. Reference made to traditional works in IPLAA which implies a different context. • Opposed to testamentary disposition because | <p>and participated at the 2015 conference on the Copyright Amendment Bill as panellists. the dti noted and accepted certain comments made by the DST such as the Resale Royalty which was supported on the grounds that it extends to artists to gain extended benefits in the work and that the resale right is extended to collective authorship which was added to the current CAB. the dti also amended the provisions relating to perpetual ownership etc. was also amended.</p> <ul style="list-style-type: none"> • the dti further consulted with the DST on the IKS Bill, IPLAA, the draft IP Policy and the CAB on the 19 October 2015. • On the 27 July 2017 the Minister of DST wrote to the dti- “The need to amend the Copyright Act is welcomed for a number of reasons, including international advancements in the area of copyright law, especially as it relates to developments in the digital arena as well as fair use provisions and reasonable access to information. In this regard DST supports the amendments to the current legislative framework.” |
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| | <p>it is a western concept which is conflict with customary law, redrafting clause 9(f) to include intestate.</p> <ul style="list-style-type: none"> • Clarity sought on the term user. The term is used as a standalone and in other clauses it is grouped together with other terms. • Reference to IPLAA will remove the confusion that the work is a product of the NRS. • The word representative should be included wherever IK communities are mentioned. • The Bill contravenes IPLAA as individual author can be an IKS community but an IKS community cannot be an author. Collective vs Individual. • Personal use exception will be used to misappropriate IK. • Clarity on whether IPLAA will apply to commissioned works and if the IP tribunal will replace the commission in IPLAA. | |
| <p>South African Composers</p> | <ul style="list-style-type: none"> • Fair use is linked to the technological advancements but has potential to compromise the moral right to earn a living. A balance in this regard is required. • 25 year assignment period is excessive because assignment between artists and recording companies do not last longer than 5 years. Also, the assignment clause should read “a period not exceeding” instead of “a period of”. • There is a need for more regulation of the music industry. • The current Copyright Act is out-dated in that it does not have provisions relating to the technological era. • There was not sufficient consultation on the Bill. | <ul style="list-style-type: none"> • Notes the submission and supports that music industry needs more regulation. • The matter of consultation has been addressed in this document. |

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| | <ul style="list-style-type: none">• The Bill should make reference to local content. | |
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CONCLUSION:

the **dti** in the main would want to claim that the mandate from the President's conference of the Creative Industry in 2009. The Farlam Copyright Commission (CRC) on the effectiveness of collective copyright management presented a report that was ultimately adopted by Cabinet. the **dti** embarked on a process to implement the CRC report which includes the current legislative reform and non-legislative interventions. the **dti** established a CRC Task Team which consisted of the departments of Arts and Culture and Communications in order to create a coordinated effort to implement the CRC. The CRC is the epicentre of the CAB and the Performers Protection Amendment Bill. There may be issues that are interrelated musicians, performers, authors etc., but the Bill tries to deal with issues that directly affect the above mentioned stakeholders.

the **dti** therefore concedes that other Ministries such as Arts and Culture, Communications, Telecommunications and Postal Services also need to implement related legislation for the effectiveness of the Bill.