**Deliberations on the Copyright Amendment Bill**

| **Clause/**  **Sections** | **Content** | **Outstanding issues** | **Decision** |
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| **Long Title** |  |  | To consider at the end |
| **Clause 1 section 1** | Definitions | Definition of:   * “orphan work” may have to be removed; * “Tribunal” to be amended; * For clause 7 we need a definition of “visual artistic work”; * DAC - we need a definition of “user”; | To consider at the end |
| “visual artistic work”—  *(a)* means an artistic work that aims to please the visual sense and includes an artistic work such as a painting, a sculpture, a drawing and an engraving; and  *(b)* excludes commercialised artistic work such as industrial design, architectural and engineering drawings, graphic design, fashion design, interior design, circuit layouts, commercial logos, and icons for applications.  “user” means …………. | |
| **Clause 2**  **Section 2A** | Scope of Copyright Protection | None | No amendments required |
| **Clause 3 section 5** | Copyright in relation to the State | Subcom decision: whole clause to be removed (i.e the section should only apply to the State and prescribed international organisations). If this is not accepted by the PC, section 21(2) requires a consequential amendment.  A concern was raised by the DAC that works owned by the State are being commercially exploited by researchers / made available online: Propose to introduce ear rights management | Agree that “funded by” be removed  Flagged – whole clause and issue of the State’s work being commercially exploited by researchers |
| ‘‘(2) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by~~, funded by~~ or under the direction or control of the state or **[such]** an international **[organizations as may be prescribed]** or local organisations.’’. | |
| **Clause 4**  **Section 6** | Nature of Copyright in literary or musical works | None | No amendments required |
| **Clause 5 Section 6A** | Royalties regarding literary or musical works | Retrospective application:  The Committee indicated that existing contracts must be renegotiated. There are however a few practical considerations:   * What if the author cannot be found? * How far back should this go? What if a company bought the copyright in a work 100 years ago? * Within what period of time must contracts be revisited and put into writing? 48 months after the commencement of the Act? * If an agreement cannot be reached and the matter is referred to the Tribunal – will the Tribunal be able to handle all the matters? | The Committee agreed that this clause should provide for:   * Contractual freedom; * A portion of the royalties received when a work is used, must go to the author, regardless of whether the author sold his / her copyright in the work; and * There must be a template of what the agreement between authors and buyers of copyright should contain. This may be prescribed, with minimum requirements stipulated in the Bill.   Note: This portion on the minimum content of the agreement will have to be advertised for comment  Flagged the issue of retrospective application |
| ‘‘**Royalties regarding literary or musical works**  **6A.** (1) Notwithstanding the transfer of the copyright in a literary or musical work the author shall have the right to a percentage of any royalty received by the copyright owner, subject to the provisions of this Act, for the execution, or authorisation, of any of the acts contemplated in section 6.  (2) *(a)* The royalty percentage contemplated in subsection (1) shall be determined by a written agreement in the prescribed manner and form, between the author and the person to whom the author is transferring copyright, or between their representative collecting societies.  *(b)* Any subsequent sale of the copyright in that work is subject to the agreement between the author and the transferor, contemplated in paragraph *(a)* or the order contemplated in subsection (3), as the case may be.  (3) Where the author and transferor contemplated in subsection (2)*(a)* cannot agree on the royalty percentage, the author or transferor may refer the matter to the Tribunal for an order determining the amount.  (4) The agreement contemplated in subsection (2)*(a)* must include the following:  *(a)* The rights and obligations of the author and the transferor;  *(b)* the royalty percentage agreed on, or ordered by the Tribunal, as the case may be;  *(c)* the method and period within which the amount must be paid by the transferor to the author;  *(d)* a cooling off period; and  *(e)* a dispute resolution mechanism.’’. | |
| **Clause 6**  **Section 7** | Nature of copyright in artistic works | None | No amendments required |
| **Clause 7**  **Section 7A** | Royalties regarding artistic works | DTI proposed that this clause be deleted as Resale Royalty (RRR) provides for this royalty. Concern:   * RRR is limited to visual arts * RRR is only for the resale of a work, not for reproduction, publication, including the work in a film or making an adaptation of the work (acts allowed by section 7 iro artistic works). | Flagged |
| If retained, it should be amended as clause 5 (S6A) with the necessary amendments:  ‘‘**Royalties regarding artistic works**  **7A.** (1) Notwithstanding the transfer of the copyright in an artistic work the author shall have the right to a percentage of any royalty received by the copyright owner, subject to the provisions of this Act, for the execution, or authorisation, of any of the acts contemplated in section 7.  (2) *(a)* The royalty percentage contemplated in subsection (1) shall be determined by a written agreement in the prescribed manner and form, between the author and the person to whom the author is transferring copyright, or between their representative collecting societies.  *(b)* Any subsequent sale of the copyright in that work is subject to the agreement between the author and the transferor, contemplated in paragraph *(a)* or the order contemplated in subsection (3), as the case may be.  (3) Where the author and transferor contemplated in subsection (2)*(a)* cannot agree on the royalty percentage, the author or transferor may refer the matter to the Tribunal for an order determining the amount.  (4) The agreement contemplated in subsection (2)*(a)* must include the following:  *(a)* The rights and obligations of the author and the transferor;  *(b)* the royalty percentage agreed on, or ordered by the Tribunal, as the case may be;  *(c)* the method and period within which the amount must be paid by the transferor to the author;  *(d)* a cooling off period; and  *(e)* a dispute resolution mechanism.’’ | |
| **Clause 7**  **Section 7B** |  |  | * The Resale Royalty Right must only be applicable to visual arts; * The clause must be applicable to all works, even if created before the commencement of the Amendment Act (this will have to be advertised for comments); * This aspect will have to be advertised to call for comments * Provision must be made for reciprocity. |
| * Replace “artistic work” with “visual artistic work” in sections 7A to E   ‘‘(3) The author of a visual artistic work shall be entitled to receive a resale royalty if—  *(a)* at the time when the resale is concluded—  (i) the author is a South African citizen or ~~is resident in the Republic~~ a citizen of a designated country; and  (ii) the term of validity of the resale royalty right has not expired;  …  (5) *(a)*  The Minister may designate any country for the purposes of subsection (3)*(a)*(i) by notice in the *Gazette*.  *(b)* The Minister may be like notice withdraw any designation contemplated in paragraph *(a)*.  (6) Sections 7B, 7C, 7D and 7E applies to a visual artistic work that was made before the commencement date of the Copyright Amendment Act, 2019, if that visual artistic work falls within the application of this Act.’’. | |
| **Clause 7**  **Section 7C** | Proof of author | Consider a method for artists to register work so that it cannot be adapted later by a company to whom the work was shown and who rejected the work at the time.   * Is this only iro literary works? It probably would fit better in section 21 (ownership of copyright) * This will have to be advertised for comments   “Indigenous cultural expressions / indigenous community” – dti is of the view that these phrases can be deleted as the reliance will be on the DST Bill. The concern is that the Committee cannot legislate on a Bill that has not yet been passed. | Flagged  Flagged |
| Iro registering works: Possible amendment to section 21  Iro IPLAA expressions:  ‘‘**Transitional provision**  Any reference in the Copyright Amendment Act, 2019, to the phrases “indigenous cultural expressions”, “indigenous community” or “National Trust” shall only be effective upon the date on which the Intellectual Property Laws Amendment Act, 2013 (Act No. 28 of 2013) becomes operational.’’ | |
| **Clause 7**  **Section 7D** | Duration of resale royalty right | None | No amendments required |
| **Clause 7**  **Section 7E** | Transmission of resale royalty right | “indigenous community” – dti is of the view that these phrases can be deleted as the reliance will be on the DST Bill. The concern is that the Committee cannot legislate on a Bill that has not yet been passed. | Flagged |
| **Clause 8**  **Section 8** | Nature of copyright in cinematograph films | None | No amendments required |
| **Clause 9**  **Section 8A** | Royalties regarding audiovisual works | None | To be amended as clause 5 (S6A) with the necessary amendments |
| ‘‘**Royalties regarding audiovisual works**  **8A.** (1) Notwithstanding the transfer of the copyright in an audiovisual work the author shall have the right to a percentage of any royalty received by the copyright owner, subject to the provisions of this Act, for the execution, or authorisation, of any of the acts contemplated in section 8.  (2) *(a)* The royalty percentage contemplated in subsection (1) shall be determined by a written agreement in the prescribed manner and form, between the author and the person to whom the author is transferring copyright, or between their representative collecting societies.  *(b)* Any subsequent sale of the copyright in that work is subject to the agreement between the author and the transferor, contemplated in paragraph *(a)* or the order contemplated in subsection (3), as the case may be.  (3) Where the author and transferor contemplated in subsection (2)*(a)* cannot agree on the royalty percentage, the author or transferor may refer the matter to the Tribunal for an order determining the amount.  (4) The agreement contemplated in subsection (2)*(a)* must include the following:  *(a)* The rights and obligations of the author and the transferor;  *(b)* the royalty percentage agreed on, or ordered by the Tribunal, as the case may be;  *(c)* the method and period within which the amount must be paid by the transferor to the author;  *(d)* a cooling off period; and  *(e)* a dispute resolution mechanism.’’ | |
| **Clause 10**  **Section 9** | Nature of copyright in sound recordings | None | No amendments required |
| **Clause 11: Section 9A** | Royalties regarding sound recordings | Concern about the cumbersome process. Is the provision for log sheets sufficient, so that the process can be removed? (i.e. the current *(aA)* to *(aE)*)  Should failure to report fully be an offence?  Need to define “user” – dti to provide a definition  “indigenous community” – dti is of the view that these phrases can be deleted as the reliance will be on the DST Bill. The concern is that the Committee cannot legislate on a Bill that has not yet been passed. | Provide for log sheets to be kept  Flagged  See clause 1  Flagged |
| Re log sheets:  ‘‘*(aA)* Any person who performs an act contemplated in section 9*(c)*, *(d)* or *(e)* must—  (i) register that act in the prescribed manner and form; and  (ii) submit a report to the performer, copyright owner or collecting society, as the case may be, in the prescribed period and manner, for the purpose of calculating the royalties due and payable by that person.’’ | |
| **Clause 12**  **Section 11** | Nature of copyright in programme-carrying signals | None | No amendments required |
| **Clause 13**  **Repeal Section 12** | General exceptions from protection of literary and musical works | None | No amendments required |
| **Clause 14**  **Section 12A** | General exceptions from copyright protection |  | Agreed that the Bill should use a hybrid approach to the fair use / fair dealing debate, which hybrid model must be anchored in “fair use”.  Subsection (1) (save for use of the phrase “fair use”) provides a list of exceptions, so would fit in with the hybrid model.  Remove (1)*(a)*(vii) re underserved populations as it is vague |
| Dti to consider if the phrase “fair use” in section 12A is still applicable, given the hybrid approach. Dti will look at the Singapore model and propose wording that suits South Africa’s situation.  ‘‘~~(vii) expanding access for underserved populations;~~’’ | |
| **Clause 14 Section 12B** | Specific exceptions from copyright protection applicable to all works | (1)*(j)*(i) – consider if this is not open to abuse: I.e. that a person may use this paragraph to make as many copies of the whole of a work for any reason. | This clause provides a list of exceptions, so would fit in with the hybrid model.  Remove “public information” from section 12B(1)*(f)*(iii)  Flag (1)*(j)*(i) |
| ‘‘(iii) such work is translated and communicated to the public for non-commercial ~~public information~~ purposes;’’ | |
| **Clause 14 Section 12C** | Temporary reproduction and adaptation |  | This clause provides a list of exceptions, so would fit in with the hybrid model. |
| **Clause 14 Section 12D** | Reproduction for educational and academic activities | “indigenous community” – dti is of the view that these phrases can be deleted as the reliance will be on the DST Bill. The concern is that the Committee cannot legislate on a Bill that has not yet been passed. | This clause provides a list of exceptions, so would fit in with the hybrid model.  Flag issue of IPLAA |
| **Clause 15**  **Delete Section 16(1)** | General exceptions regarding protection of cinematograph films | None | No amendments required |
| **Clause 16 Repeal Section 17** | General exceptions regarding protection of sound recordings | None | No amendments required |
| **Clause 17 Repeal Section 18** | General exceptions regarding protection of broadcasts | None | No amendments required |
| **Clause 18 Repeal Section 19A** | General exceptions regarding protection of published editions | None | No amendments required |
| **Clause 19**  **Section 19B** | General exceptions regarding protection of computer programs | Proposals to broaden the clause – the following proposals were received from the public:   * Computer programs should also be made available for teaching purposes, educational use or providing disabled access. (Anton Mostert Chair) * The exceptions for use of computer programs should be expanded to include a broader range of legitimate uses, including: (UCT)   • reverse engineering to create interoperable hardware (only software is now covered); and  • to repair products that are subject to copyrighted software.  Dti proposed the inclusion of the words “education and academic activities”. | Flagged |
| Proposal:  ‘‘**19B.** (1) A person having a right to use a copy of a computer program may, without the authorisation of the copyright owner, observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if that person does so—  *(a)* while performing any of the acts of loading, displaying, executing, transmitting or storing the program which he or she is entitled to perform; or  *(b)* as part of educational or academic activities.’’ | |
| **Clause 20**  **Section 19C** | General exceptions regarding protection of copyright work for libraries, archives, museums and galleries | Should these exceptions also be applicable to galleries? Or should it be removed (DAC concern) | Flagged |
| **Clause 20**  **Section 19D** | General exceptions regarding protection of copyright work for persons with disability | None | No amendments required |
| **Clause 21**  **Section 20** | Moral rights | None | No amendments required |
| **Clause 22**  **Section 21** | Ownership of copyright | 1. The clause currently provides that if there is not contract governing the relationship, the person who commissions is the copyright owner and the author has a license to do anything with the work that the copyright owner may do.   * The concern here is that you then in practice have 2 people who may reproduce the work and exploit the work, so it impacts significantly on the rights of the copyright owner (person who commissioned the work) * Dti is proposing a system where the author may approach the Tribunal and request permission to do certain acts with the work, even though the author is not the copyright owner (as the work was commissioned). The Tribunal will then consider the following criteria before granting permission: * The nature of the work; * The rationale for not using the work by the owner if not used; * Public interest for the granting of the license; and * Applicable tariff. * Dti is also proposing that this clause perhaps be removed from this Bill for now.   2. “ …. the ownership of any copyright subsisting in the work shall be governed by contract: Provided that in the absence of a valid contract, ownership shall vest in the person commissioning the work….”   * “shall be governed by contract” means that a contract is a legal requirement. Propose that it reads “written contract”. If that is the case then the proviso is contradicting this requirement. * Should “ a valid contract” not rather read “if the contract does not provide for ownership…”?   3. What about situations where the commissioned work is used for a purpose that differs from the purpose indicated in the contract? Should this dispute be referred to the Tribunal? | Flagged |
| **Clause 23**  **Section 22** | Assignment and licences in respect of copyright | What if the work is used in something where the copyright owner has to assign that right for e.g. 50 years in accordance with USA copyright law? If the assignment in South Africa is only for a maximum of 25 years, what happens during the remainder of the 50 years?  Proposal: the right reverts to the assignor (e.g. author) (i.e. will receive the royalties), but we need to stipulate that any obligations that may still be in existence when the right reverts, must be honoured by the assignor (author). | Amend the 25 year mandatory period to read “up to 25 years” as the concern is that it should not be longer than 25 years.  Flagged |
| ‘‘(3) No assignment of copyright and no exclusive licence to do an act which is subject to copyright shall have effect unless it is in writing and signed by or on behalf of the assignor, the **[licenser]** licensor or, in the case of an exclusive **[principal act]** sub-licence, the exclusive **[sub- licenser, as the case may be]** sub-licensor, as stipulated in Schedule 2: Provided that assignment of copyright shall only be valid for a period of up to 25 years from the date of ~~agreement of~~ such assignment.’’ | |
| **Clause 24**  **Section 22A** | Assignment and licences in respect of orphan works | If the fair dealing / fair use (hybrid) clauses sufficiently apply to orphan works, then this clause can be deleted. | Flagged  If retained:   * The limit of 5 years in subsection (8) can be removed as the copyright owner should not be limited in this right (a limitation amounts to expropriation); * Subsection (9) is not sound in law. The orphan work did not change owners. It is still the owner’s - He / She was just not known. The owner cannot be required to recover something that belongs to him / her already. |
|  |  | (8) The copyright owner may, ~~not later than five years after the expiration of a licence issued in terms of this section,~~ at any time, collect the royalties fixed in the licence or in default of payment, by initiating legal action to recover such royalties.  (9) Any person who can adduce evidence for the purposes of proving that he or she is the owner of copyright in an orphan work, ~~may have the copyright work returned to him or her with a claim in law to recover any royalties that accrued to the copyright work after such return~~. must submit his or her details for registration on the database of the register of copyright referred to in subsection (6)*(a)* and may for the period during which the owner of copyright was unknown, recover royalties as contemplated in subsection (8).” | |
| **Clause 25**  **Chapter 1A – Sections 22A to 22F** | COLLECTING SOCIETIES | Remove “registration” and retain “accreditation” only (these are already registered by CIPC)  Concerns raised about the limit of 1 collecting society per right  Disputes should be referred to the Tribunal | Flagged – wait for CIPC  Flagged  Flagged |
| **Clause 26**  **Section 23** | Infringement | None | No amendments required |
| **Clause 27**  **Section 27** | Penalties and proceedings in respect of dealings which infringe copyright | Dti: Technological protection measures must be carefully considered because on the one hand they prevent abuses of copyrighted works digitally, but on the other, they clash with the use of exceptions and limitations allowed in copyright law. | Flagged |
| **Clause 28**  **Section 28** | Provision for restricting importation of copies | None | No amendments required |
| **Clause 29**  **Section 28O** | Prohibited conduct in respect of technological protection measures | None | No amendments required |
| **Clause 29**  **Section 28P** | Exceptions in respect of technological protection measure | None | No amendments required |
| **Clause 29**  **Section 28Q** | Enforcement by Commission | None | No amendments required |
| **Clause 29**  **Section 28R** | Prohibited conduct in respect of copyright management information | None | No amendments required |
| **Clause 29**  **Section 28S** | Exceptions in respect of copyright management information | None | No amendments required |
| **Clause 30**  **Heading of Chapter 3** | **[COPYRIGHT TRIBUNAL]** REGULATORY AND ENFORCEMENT AGENCIES’’ | This clause is subject to the decision to be taken in respect of clause 31 | Flagged |
| **Clause 31**  **Section 29** | Establishment of Tribunal | * Dti proposes to remove the establishment of the IP but to strengthen the Copyright Tribunal. * Should the Tribunal continue under the umbrella of the CIPC, then this clause and related clauses in this chapter will have to be removed. * Depending on what changes are required to the Bill, this may require advertising to call for comment. * Propose widening the powers of the Tribunal, empower the Commissioner. * Dti to confirm if this requires amendment to the Patent Act of 1978. | Flagged |
| **Clause 32**  **Section 29A** | Functions of Tribunal | See clause 31 | Flagged |
| **Clause 32**  **Section 29B** | Appointment of members of Tribunal | See clause 31 | Flagged |
| **Clause 32**  **Section 29C** | Qualifications for appointment | See clause 31 | Flagged |
| **Clause 32**  **Section 29D** | Terms of office of members of Tribunal | See clause 31 | Flagged |
| **Clause 32**  **Section 29E** | Removal or suspension of members of Tribunal | See clause 31 | Flagged |
| **Clause 32**  **Section 29F** | Conflict and disclosure of interest | See clause 31 | Flagged |
| **Clause 32**  **Section 29G** | Proceedings of Tribunal | See clause 31 | Flagged |
| **Clause 32**  **Section 29H** | Hearings before Tribunal | See clause 31 | Flagged |
| **Clause 32**  **Section 29I** | Right to participate in hearing | See clause 31 | Flagged |
| **Clause 32**  **Section 29J** | Powers of member presiding at hearing | See clause 31 | Flagged |
| **Clause 32**  **Section 29K** | Rules of procedure | See clause 31 | Flagged |
| **Clause 32**  **Section 29L** | Appeals and reviews | See clause 31 | Flagged |
| **Clause 32**  **Section 29M** | Interim relief | See clause 31 | Flagged |
| **Clause 32**  **Section 29N** | Orders of Tribunal | See clause 31 | Flagged |
| **Clause 32**  **Section 29O** | Witnesses | See clause 31 | Flagged |
| **Clause 32**  **Section 29P** | Costs | * See clause 31 * DAC: Suggested the cost of Tribunal to the indigent-Legal aid as a necessity. | Flagged |
| **Clause 32**  **Section 29Q** | Appointment of staff of Tribunal | See clause 31 | Flagged |
| **Clause 32**  **Section 29R** | Finances | See clause 31 | Flagged |
| **Clause 32**  **Section 29S** | Reviews and reports to Minister | See clause 31 | Flagged |
| **Clause 33**  **Repeals Sections 30, 31, 32, 33 and 36** | (Provisions dealing with existing Tribunal) | See clause 31 | Flagged |
| **Clause 34**  **Section 39** | Regulations | None | No amendments required |
| **Clause 35**  **Section 39B** | Unenforceable contractual term | This clause protects a vulnerable party who contracted him or herself out of the rights afforded by the Act by allowing that vulnerable party to say – “This is an unenforceable term so I remain protected”. However, paragraphs *(b)* and *(c)* allows a settlement agreement and a service licence to exclude the protection afforded by the Act. Is this the policy intention? | Flagged |
| **Clause 36**  **Schedule 2, Part A** | Translation Licences | See below | Flagged |
| Item 2(3)*(a)*  Application for licence to translate copyright work | Note: “specified language” is not defined in the Act nor in the Bill.  Note: The underlined parts are proposed corrections – these are aligned with sub-item (1).  Which is the correct phrase?  “(3) No licence shall be granted until the expiration of the following applicable periods, commencing from the date of first publication of the original work:  *(a)* One week where the application is for a licence for translation into *[Bill as introduced: “specified languages”]* an official language;  *(b)* three months where the application is for a licence into *[Bill as introduced: “specified languages in general use or any other language in general use”]* a foreign language in regular use in the Republic; and | Flagged |
| Item 4(2)*(a)*  Scope and conditions of licence | This clause does not make sense – what is the intention with this clause, so that it can be worded to reflect that intention:  ‘‘(2) Copies of a translation published under a licence may be sent abroad by the government or a public entity if—  (a) the translation is into a language other than the language used in the Republic that will be of use;’’ | Flagged |
| Item 4(5)  Scope and conditions of licence | What does “such use” refer to? It is vague.  ‘‘(5) As a condition of maintaining the validity of the licence, the translation must be correct for such use and all published copies must include the following:’’ | Flagged |
| Item 5(1)*(a)*  Licence for broadcasting organisation | Which country is referred to here?  Note: The underlined word is a proposal  ‘‘(1) A licence under this Part may also be granted to a domestic broadcasting organisation if the following conditions are met:  (a) The translation is made from a copy made and acquired in accordance with the laws of the *[Bill as introduced: “country”]* Republic’’ | Flagged |
| **Clause 36**  **Schedule 2, Part B** | Reproduction Licences | Dti’s slides indicate: “Translation under the current Act are dealt with under adaptations, adaptation is one of the restricted acts under section 6, 7, 8 and 11B copyright work. Any person intending to adapt a copyright work belonging to another person must request permission to do so, should the owner refuse to grant permission then the Copyright Tribunal may be approached for a compulsory licence.  These provisions must be deleted from the Bill.”   * Which provisions must be deleted?   Also see below iro specific items | Flagged |
| Item 3(1)*(a)* Granting of licence | * What are “systematic instructional activities” (the phrase also appears in item 4(1)*(a)*) ? * What does “under the same conditions” refer to? Which conditions are these?   (1) Before granting a licence, the Tribunal must be satisfied that—  *(a)* no distribution by, or with authorisation of, the copyright owner of copies in printed or analogous forms of reproduction of that particular edition has taken place in the Republic to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the Republic or that, under the same conditions, such copies have not been on sale in the Republic for a continuous period of at least six months; and | Flagged |
| Item 4(2)*(c)*  Scope and condition of licence | What is the intention of this clause? There are too many interpretations and questions around it – it needs to be made clear:   * Are we trying to exclude sub-contracting? * How will an entity outside of the Republic get a licence to reproduce outside of the RSA? Will they not just reproduce under their own laws? * Sub-item (2)*(e)* states that the license is transferable, so why would the person in *(c)* not just transfer the license then?   ‘‘(2) If the Tribunal is satisfied that facilities do not exist in the Republic to do the printing or reproduction or that existing facilities are incapable for economic or practical reasons of ensuring such printing or reproduction, and the contract between the prospective licensee and the establishment doing the work of reproduction so requires, the Tribunal may allow reproduction outside the Republic: Provided that—  *(c)* the prospective licensee may not entrust the work of reproduction to an establishment created to reproduce copies of works in respect of which a licence has already been granted under this Part; | Flagged |
| **Clause 37** **Amendment of certain expressions in Act 98 of 1978** | ‘‘cinematographic film’’ and ‘‘film’’ changed to ‘‘audiovisual work’’ and ‘‘work’’ | None  Technical panel to confirm:   * Do these consequential amendments iro cinematograph film correctly reflect the definitions of ‘‘author’’; ‘‘copy’’; ‘‘dramatic work’’; ‘‘infringing copy’’; ‘‘literary work’’; ‘‘performance’’; ‘‘photograph’’; ‘‘reproduction’’; ‘‘sound recording’? * Do these consequential amendments iro cinematograph film correctly reflect section 1(2); 1(5)*(b)* and *(d)*; 2(1)*(d)*; 3(2)*(b)*; 4(1)*(e)*; 5(4); 7*(c)*; 15(1); 15(3); 26(6); 26(10); 28E(1)*(b)*, *(e)*, *(f)*; *(g)*, *(i)*; 28H(2)*(b)*; 37(1)*(a)*; ). * Is it correct to exclude the change iro s26(9) and s43 – i.e. in ss 26(9) and 43 it remains cinematograph film? | No amendments required |
| **Clause 38**  **Transitional provision** | Any reference to the “indigenous cultural expressions”, “indigenous community” or “National Trust” is only effective when the Intellectual Property Laws Amendment Act, 2013 (Act No. 28 of 2013) becomes operational. | See discussions above re whether these phrases should be included in this Bill, or whether DST institutions will be used. | Flagged |