**Proposed wording – Copyright**

**Clause 5**

‘‘**Share in royalties regarding literary or musical works**

**6A.** (1) For thepurposes of this section, **‘royalty’** means the gross profit made on the exploitation of a literary work or musical work by a copyright owner or a person who has been authorised by the author to do any of the acts contemplated in section 6.

(2) Notwithstanding—

*(a)* the assignment of the copyright in a literary or musical work; or

 *(b)* the authorisation by the author of a literary or musical work of the right to do any of the acts contemplated in section 6,

the author shall have the right to ~~a percentage of~~ share in ~~any~~ the 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.

(3) *(a)* The author’s share of the royalty ~~percentage~~ contemplated in subsection (2) shall be determined by a written agreement in the prescribed manner and form, between the author and the ~~person to whom the author is assigning~~ copyright owner, or the person contemplated in subsection (2)*(b)*, or between their representative collecting societies.

*(b)* Any ~~subsequent~~ assignment of the copyright in that work, by the copyright owner, or subsequent copyright owners, is subject to the agreement between the author and the ~~assignee~~ copyright owner, contemplated in paragraph *(a)*, or the order contemplated in subsection (4), as the case may be.

(4) Where the author and ~~assignee~~ copyright owner, or the person contemplated in subsection (2)*(b),* ~~contemplated in subsection (3)~~*~~(a)~~* cannot agree on the author’s share of the royalty ~~percentage~~, ~~the author, or assignee~~ any party may refer the matter to the Tribunal for an order determining the ~~percentage~~ author’s share of the royalty.

(5) The agreement contemplated in subsection (3)*(a)* must include the following:

*(a)* The rights and obligations of the author and the ~~assignee~~ copyright owner or the person contemplated in subsection (2)*(b)*;

*(b)* the author’s share of 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 ~~assignee~~ copyright owner, or the person contemplated in subsection (2)*(b)*, to the author; and

*(d)* ~~a cooling off period; and~~

*~~(e)~~*a dispute resolution mechanism.

(6) This section does not apply to—

*(a)* a copyright owner who commissioned, or who is the author of, the ~~copyrighted~~ literary or musical work in question; ~~or~~

*(b)* a work created in the course of employment contemplated in section 21(1)*(b)* and *(d);* or

*(c)* a work where copyright is conferred by section 5 in the state, local or international organisations.

(7) *(a)* This section applies to a literary or musical work where copyright in that work was assigned before the commencement date of the Copyright Amendment Act, 2019, if that literary or musical work—

(i) falls within the application of this Act; and

(ii) is still exploited for profit.

*(b)* The Minister must prescribe the process to give effect to the application of this section to a work contemplated in paragraph *(a)*.

*(c)* The share in the royalty only applies to royalties received, in respect of a work contemplated in paragraph *(a)*, after the commencement date of the Copyright Amendment Act, 2019.’’.

 ~~(6)~~ *~~(a)~~* ~~A person who obtained the copyright in a literary or musical work prior to the commencement of the Copyright Amendment Act, 2019, must within 48 months after said commencement negotiate of royalty as contemplated in subsection (2) with the author of the copyrighted literary or musical work in question.~~

*~~(b)~~* ~~Subsections (2), (3), and (4) apply to the negotiation contemplated in paragraph~~ *~~(a)~~*~~.~~

*~~(c)~~* ~~Section 22A, with the necessary changes, applies where the author cannot be found.~~

*~~(d)~~* ~~This subsection does not apply—~~

~~(ii) where the term of copyright in the copyrighted literary or musical work has ended; or~~

~~(iii) to any royalties earned by the assignee or licensee, as the case may be, that were received by that assignee or licensee, as the case may be, prior to the commencement of the Copyright Amendment Act, 2019.~~

**Clause 7**

‘‘**Share in royalties regarding visual artistic works**

**7A.** (1)For thepurposes of this section, **‘royalty’** means the gross profit made on the exploitation of a visual artistic work by a copyright owner or a person who has been authorised by the author to do any of the acts contemplated in section 7, but does not include profit made on the commercial resale of a visual artistic work contemplated in section 7B.

(2) Notwithstanding—

*(a)* the assignment of the copyright in a visual artistic work; or

*(b)* the authorisation by the author of a visual artistic work of the right to do any of the acts contemplated in section 7,

the author shall have the right to ~~a percentage of~~ share in ~~any~~ the 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.

(3) *(a)* The author’s share of the royalty ~~percentage~~ contemplated in subsection (2) shall be determined by a written agreement in the prescribed manner and form, between the author and the ~~person to whom the author is assigning~~ copyright owner, or the person contemplated in subsection (2)*(b)*, or between their representative collecting societies.

*(b)* Any ~~subsequent~~ assignment of the copyright in that work, by the copyright owner, or subsequent copyright owners, is subject to the agreement between the author and the ~~assignee~~ copyright owner, contemplated in paragraph *(a)*, or the order contemplated in subsection (4), as the case may be.

(4) Where the author and ~~assignee~~ copyright owner, or the person contemplated in subsection (2)*(b),* ~~contemplated in subsection (3)~~*~~(a)~~* cannot agree on the author’s share of the royalty ~~percentage~~, ~~the author, or assignee~~ any party may refer the matter to the Tribunal for an order determining the ~~percentage~~ author’s share of the royalty.

(5) The agreement contemplated in subsection (3)*(a)* must include the following:

*(a)* The rights and obligations of the author and the ~~assignee~~ copyright owner or the person contemplated in subsection (2)*(b)*;

*(b)* the author’s share of 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 ~~assignee~~ copyright owner, or the person contemplated in subsection (2)*(b)*, to the author; and

*(d)* ~~a cooling off period; and~~

*~~(e)~~*a dispute resolution mechanism.

(6) This section does not apply to—

*(a)* a copyright owner who commissioned, or who is the author of, the ~~copyrighted~~ visual artistic work in question; ~~or~~

*(b)* a work created in the course of employment contemplated in section 21(1)*(b)* and *(d);* or

*(c)* a work where copyright is conferred by section 5 in the state, local or international organisations.

(7) *(a)* This section applies to a visual artistic work where copyright in that work was assigned before the commencement date of the Copyright Amendment Act, 2019, if that visual artistic work—

(i) falls within the application of this Act; and

(ii) is still exploited for profit.

*(b)* The Minister must prescribe the process to give effect to the application of this section to a work contemplated in paragraph *(a)*.

*(c)* The share in the royalty only applies to royalties received, in respect of a work contemplated in paragraph *(a)*, after the commencement date of the Copyright Amendment Act, 2019.

~~(6)~~ *~~(a)~~* ~~A person who obtained the copyright in an artistic work prior to the commencement of the Copyright Amendment Act, 2019, must within 48 months after said commencement negotiate a percentage of royalty as contemplated in subsection (2) with the author of the copyrighted artistic work in question.~~

*~~(b)~~*  ~~Subsections (2), (3), and (4) apply to the negotiation contemplated in paragraph~~ *~~(a).~~*

*~~(c)~~* ~~Section 22A, with the necessary changes, applies where the author cannot be found.~~

*~~(d)~~* ~~This subsection does not apply—~~

~~(i) to a copyright owner who commissioned, or who is the author of, the copyrighted artistic work in question; or~~

~~(ii) where the term of copyright in the copyrighted artistic work has ended~~

~~(iii) to any royalties earned by the assignee or licensee, as the case may be, that were received by that assignee or licensee, as the case may be, prior to the commencement of the Copyright Amendment Act, 2019.~~

**Clause 7**

**Resale royalty right regarding visual artistic works**

**7B.** (1) The author of a visual artistic work in which copyright subsists or his or her heirs as may be applicable, must be paid royalties on the commercial resale within the art market of ~~his or her~~ that work.

(2) *(a)* Royalties in respect of visual artistic works shall be payable at the rate prescribed by the Minister after consultation with the Minister responsible for arts and culture.

*(b)* The Minister must, before prescribing the rate referred to in paragraph *(a)*, publish the rate proposed in the *Gazette* and call for written comments by any interested party to be provided within 30 days after publication.

*(c)* The Minister may from time to time in the manner contemplated in paragraph *(b)*, ~~increase~~ amend the prescribed rate contemplated in paragraph *(a)*.

(3) The seller and the art market professional concerned are jointly and severally liable to pay the ~~The~~ royalties contemplated in subsection (1) ~~are payable by every seller: Provided the duty to pay the royalty~~ to the author or his or her heirs as may be applicable, ~~shall rest on the art market professional concerned~~.

(4) The author of a visual artistic work or his or her heirs as may be applicable, 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 ~~legally~~ domiciled or resident in the Republic or is a citizen of a ~~designated~~ country specified by the Minister in accordance with section 37; and

(ii) the term of validity of the resale royalty right has not expired;

*(b)* in the case of a deceased author, the deceased was at the time of death a South African citizen or was ~~legally~~ domiciled or resident in the Republic or was a citizen of a country specified by the Minister in accordance with section 37;

*(c)* the resale or any part of the transaction takes place in the Republic or in any country specified by the Minister in accordance with section 37; and

*(d)* the resale of the work is recognisable after the commencement of section ~~9~~ 7 of the Copyright Amendment Act, 2019.

(5) A resale royalty right applies whether or not the author was the first owner of any copyright in the work.

**Clause 9**

‘‘**Share in royalties regarding audiovisual works**

**8A.** (1) ~~Notwithstanding the assignment of the copyright in an audiovisual work the author~~ A performer shall, subject to the Performers Protection Act, 1967 (Act No. 11 1967) have the right to ~~a percentage of~~ share in ~~any~~ the 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 performer’s share of the royalty ~~percentage~~ contemplated in subsection (1) shall be determined by a written agreement in the prescribed manner and form, between the ~~author~~ performer~~, and the person to whom the author is assigning~~ copyright owner~~,~~ or between their representative collecting societies.

*(b)* Any ~~subsequent~~ assignment of the copyright in that work by the copyright owner, or subsequent copyright owners, is subject to the agreement between the ~~author and the assignee~~ performer and the copyright owner, contemplated in paragraph *(a)*, or the order contemplated in subsection (4), as the case may be.

(3) Where the ~~author~~ performer and ~~assignee~~ copyright owner contemplated in subsection (2)*(a)* cannot agree on the performer’s share of the royalty ~~percentage~~, the ~~author~~ performer or ~~assignee~~ copyright owner may refer the matter to the Tribunal for an order determining the ~~percentage~~ performer’s share of the royalty.

(4) The agreement contemplated in subsection (2)*(a)* must include the following:

*(a)* The rights and obligations of the ~~author~~ performer and the ~~assignee~~ copyright owner;

*(b)* the performer’s share of 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 ~~assignee~~ copyright owner to the ~~author~~ performer; and

*(d)* ~~a cooling off period; and~~

*(e)* a dispute resolution mechanism.

(5) *(a)* This section applies to an audiovisual work where copyright in that work was assigned before the commencement date of the Copyright Amendment Act, 2019, if that audiovisual work—

(i) falls within the application of this Act; and

(ii) is still exploited for profit.

*(b)* The Minister must prescribe the process to give effect to the application of this section to a work contemplated in paragraph *(a)*.

*(c)* The share in the royalty only applies to royalties received, in respect of a work contemplated in paragraph *(a)*, after the commencement date of the Copyright Amendment Act, 2019.’’.

 ~~(6)~~ *~~(a)~~* ~~A person who obtained the copyright in an audiovisual work prior to the commencement of the Copyright Amendment Act, 2019, must within 48 months after said commencement negotiate a percentage of royalty as contemplated in subsection (2) with the author of the audiovisual work in question.~~

*~~(b)~~* ~~Subsections (2), (3), and (4) apply to the negotiation contemplated in paragraph~~ *~~(a)~~*~~.~~

*~~(c)~~* ~~Section 22A, with the necessary changes, applies where the author cannot be found.~~

*~~(d)~~* ~~This subsection does not apply—~~

~~(i) to a copyright owner who commissioned, or who is author the copyrighted audiovisual work in question; or~~

~~(ii) where the term of copyright in the copyrighted audiovisual work has ended; or~~

~~(iii) to any royalties earned by the assignee or licensee, as the case may be, that were received by that assignee or licensee, as the case may be, prior to the commencement of the Copyright Amendment Act, 2019.~~

**Clause 25**

**Accreditation**

**22B.** (1) Any person who intends to act as a representative collecting society in terms of this Chapter must apply to the Commission in the prescribed manner and form for accreditation.

…

(8) *(a)* Subject to subsection (7), any person who ~~intentionally~~, gives him or herself ~~itself~~ out as a representative collecting society in terms of this Chapter without having been accredited, commits an offence.

*(b)* A person convicted of an offence in terms of paragraph *(a)*, is liable on conviction to a fine or imprisonment for a period not exceeding five years.

**Clause 30**

‘‘**Establishment of Tribunal**

**29.** (1) The Copyright Tribunal is hereby established.

(2) The Chief Justice shall designate—

*(a)* ~~five~~ three judges; and

*~~(b)~~* ~~five acting judges; and~~

*(b)* five ~~retired~~ judges who have been discharged from active service in terms of section 3 of the Judges Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001),

as members of the Tribunal.

(2) The Minister must designate one of the persons contemplated in subsection (1) as chairperson and one as deputy chairperson.

(3) The members of the Tribunal contemplated in subsection (1) shall serve for a period not exceeding five years, which period shall be renewable for a further five years.

(4) The chairperson may, on one month written notice addressed to the Minister and the Chief Justice—

*(a)* resign from the Tribunal; or

*(b)* resign as chairperson, but remain as a member of the Tribunal.

(4) A member of the Tribunal other than the chairperson may resign by giving at least one month written notice to the Minister and the Chief Justice.

(6) In the event of the expiry of the term of office of a member of the Tribunal, the member has a matter pending for adjudication before the Tribunal, the member may continue to act as a member in respect of that matter only.

~~There is hereby established a juristic person to be known as the Intellectual Property Tribunal, which—~~

*~~(a)~~* ~~has jurisdiction throughout the Republic;~~

*~~(b)~~* ~~is independent and subject only to the Constitution and the law; and~~

*~~(c)~~* ~~must perform its functions impartially and without fear or favour.~~

~~(2) Each organ of state must assist the Tribunal to maintain its independence and impartiality, and to perform its functions effectively.~~

~~(3) In carrying out its functions, the Tribunal may—~~

*~~(a)~~* ~~have regard to international developments in the intellectual property arena; and~~

*~~(b)~~* ~~consult any person, organisation or institution with regard to any matter within its jurisdiction.~~

# ~~(3) The Tribunal consists of a chairperson, deputy chairperson and not less than nine members appointed by the Minister, on a full-time or part-time basis.~~’’.

**Clause 31.**

# 29B. Qualifications for appointment

* Delete the whole of section 29B
* Consequential renumbering of 29 C to I and amendment to the heading of the clause to reflect correct numbering

**Clause 31**

# Removal or suspension of members of Tribunal

**29C.** The Minister may~~,~~ at any time, ~~after~~ in consultation with the Minister of Justice and the Chief Justice, remove or suspend a member of the Tribunal from office if such a member—

*(a)* no longer ~~becomes subject to any of the disqualifications~~ qualify to be a member of Tribunal as referred to in section 29B~~(2)~~;

*(b)* repeatedly fails to perform the duties of the Tribunal;

*(c)* due to a physical or mental illness or disability becomes incapable of performing the functions of the Tribunal;

*(d)* is found guilty of a serious misconduct; or

*(e)* engages in any activity that may undermine the integrity of the Tribunal.

# Clause 31

# Proceedings of Tribunal

**29E.** ~~(1)~~ The Minister must, in consultation with the Minister of Justice, prescribe—

*(a)* the form and procedure to make an application or referral to the Tribunal;

*(b)* rules that determine the form and manner of proceedings before the Tribunal;

*(c)* the fees applicable to proceedings before the Tribunal; and

*(d)* any other matter necessary for the proper functioning of the Tribunal.

~~The chairperson is responsible for managing the case files of the Tribunal, and must, taking into account the complexity of a matter, assign the matter to—~~

*~~(a)~~* ~~a member of the Tribunal; or~~

*~~(b)~~* ~~a panel composed of any three members of the Tribunal.~~

~~(2) When assigning a matter to a panel in terms of subsection (1)~~*~~(b)~~*~~, the chairperson must—~~

*~~(a)~~* ~~ensure that at least one member of the panel is a person with suitable legal qualifications and experience; and~~

*~~(b)~~* ~~designate a member of the panel to preside over the proceedings of the Tribunal.~~

~~(3) If a member of the panel is unable to complete the proceedings in a matter assigned to that panel due to resignation, illness, death, removal, suspension or withdrawal from a hearing in terms of this Act, the chairperson may—~~

*~~(a)~~* ~~direct that the hearing of that matter proceed before the remaining members of the panel, subject to the requirements of subsection (2)~~*~~(a)~~*~~; or~~

*~~(b)~~* ~~terminate the proceedings before that panel and constitute a new panel which may include any member of the original panel and direct the new panel to conduct the hearing afresh.~~

~~(4) The decision of a Tribunal on a matter referred to it must be in writing and must include reasons for that decision.~~

~~(5) A decision of a single member of the Tribunal hearing a matter in terms of subsection (1)~~*~~(a)~~*~~, or of a majority of the members of a panel in any other case, is the decision of the Tribunal.~~

~~(6) A decision, judgment or order of the Tribunal may be served, executed and enforced as if it were an order of the High Court and is binding subject to review or appeal to a High Court.~~

# Short title and commencement

**38.** (1) This Act is called the Copyright Amendment Act, 2019, and subject to subsection (2), comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) The following comes onto operation on a date fixed by the President by proclamation in the *Gazette*, which date may not precede the commencement of the regulations relevant to each of the sections respectively:

*(a)* Section5, in respect of the insertion of section 6A(7);

*(b)* section 7, in respect of the insertion of section 7A(7); and

*(c)* section 9, in respect of the insertion of section 8A(5).