



PERSONAL MANAGERS' ASSOCIATION

PMA PRESENTATION ON THE PERFORMERS PROTECTION AMENDMENT BILL 2018

**The Portfolio Committee on Trade and Industry
Cape Town**

Presented by: Andre Dellow

PMA Co-chairperson

September 2018

INTRODUCTION:

The PMA was founded in 1980, and comprises a group of over 30 agents from 19 professional performers' agencies that serve and assist in furthering the best interests of their members in their endeavours to promote and manage the facilitation of performance work opportunities and contracts for their represented performers. Collectively The PMA member agents are mandated by over 3000 performers to maintain standards of best business and ethical practice as enshrined in our PMA Constitution.

The PMA Constitution states:

“An Agent is responsible for the specialized development and management of the careers of the actor. The role of an Agent includes sending performers to opportunities to secure work in the form of auditions and castings, negotiating fees and handling relevant legal documents on behalf of the artists, as well as, ensuring that the administrative and financial aspects of their careers are taken care of.

The actor mandates the agent to work on their behalf and both parties are required to sign an agreement to determine their working relationship.” 2005 PMA Constitution



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contractors
artists johannesburg



Artist Connector



Brümilda
van Rensburg
ACTING ACADEMY & AGENCY



STARQUALITY
MANAGEMENT



VICLECTIC
artist management



GAENOR *Artiste Management*



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AFFILIATIONS:

The PMA is also a member of SASFED (South African Screen Federation)

and supports

The South African Guild of Actors (SAGA)

The National Association of Model Agencies (NAMA)

The South African Performing Artists Management Association (SAPAMA)

The Association for Communication and Advertising (ACA)

The Commercial Producers Association (CPA)

Sisters Working in Film and Television (SWIFT)

The Independent Producers Organisation (IPO)

The Theatre Benevolent Fund (TBF)



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WHY DO PERFORMERS CHOOSE TO HAVE AGENTS:

- Key industry players such as producers, broadcasters, casting directors look to agents to provide them with suitable talent for the roles they are looking to fill
 - Agents are the vital link between the performer and the entertainment industry
- Agents handle all the administrative aspects on behalf of the performer so they can concentrate on their performance

Agents protect performers by ensuring that industry standards and performers' contracts are adhered to and by being their first point of contact to avoid uncomfortable situations and tricky conversations that performers would rather not have in the work environment



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DEFICIENCIES IN SOUTH AFRICAN LEGISLATION SHOW PREJUDICE TO SA PERFORMERS:

In South Africa, the **economic, moral** and **exclusive rights** embedded of performers in audio-visual fixations are not recognized in our legislation.

Performers will almost inevitably, have a weaker voice in any negotiations, even in cases where a top actor, perfect for the role and with a valuable audience following is being considered.

Most contracts are signed where **the performer is required to waive all their rights** embedded in the audio-visual work.



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DEFICIENCIES IN SOUTH AFRICAN LEGISLATION SHOW PREJUDICE TO SA PERFORMERS (CONT):

The following clause appears in most of the contracts that our audio-visual performers have to sign:

7.3 The Artist acknowledges and agrees that **Company shall be the sole and exclusive owner of the Performance and Company shall be the sole and exclusive owner of all rights in and to the role and/or character portrayed by Artist, including without limitation** to the name, likeness and distinctive characterizations thereof. **Company shall have the sole and exclusive right throughout the world in all languages in perpetuity to, and the Artist hereby irrevocably and unconditionally gives every consent to enable the Company to, utilize and to exploit such role or character, all or any part of the Performance and Material...**”



“...I worked for all the local channels many of whom shared content with other channels and create content for the rest of Africa. Under the contracts I was given, I never received any remuneration for these additional airings and yet my name and image was associated with these productions for many years after I completed them.” -**Louise Barnes**, South African actor living and working in The USA (Egoli, 7de Laan, Scandal! Black Sails, Surviving Evil)



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DEFICIENCIES IN SOUTH AFRICAN LEGISLATION SHOW PREJUDICE TO SA PERFORMERS (CONT):

Productions are sold, rented and licensed to continue to generate revenues for their owners and creators, but no further consideration is made for the performer's potential to earn.

Performers are left vulnerable and prevented from continuously earning a living and enjoying basic benefits awarded to other employment sectors.

Their rights are not protected, therefore they are not protected.

This negatively impacts transformation of the sector and almost guarantees the performer a life of poverty with none to little chance of sustainability.

The right to earn an income from the use of their image is an important aspect of the copyright landscape which is currently missing in our legislation

Legislative change is needed to reflect fair and equal benefit as well as best interests of all parties.



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DEFICIENCIES IN SOUTH AFRICAN LEGISLATION
SHOW PREJUDICE TO SA PERFORMERS (CONT):

“...we welcome any change in legislation that will be to the benefit of performing artists and entertainers, particularly with regard to their income and financial security.” Peter Terry Vice Chair:
Theatre Benevolent Fund

“It is necessary that contractual agreements defining copyright ownership and its use be put in place, not only to protect the interests of all concerned, but also to facilitate financing and distribution, avoid costly disputes and reduce the risk of illegal reproduction.” (WIPO)



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PROPOSED CHANGES IN SA LEGISLATION:

We propose that the rights embedded in The Beijing Treaty (WIPO 2012) be ratified and adopted into the Act with specific reference to:

The Right of Reproduction:

To authorise direct or indirect reproduction of the performance fixed in an audio-visual fixation in any manner or form.

The Right of Distribution:

To authorise the making available to the public of the original and copies of the performance fixed in an audio-visual fixation through sale or other transfer of ownership.

The Right of Rental:

To authorise the commercial rental to the public of the original and copies of the performance.

The Right of Making Available:

To authorise the making available to the public by wired or wireless means, of any performance fixed in an audio-visual fixation, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them. This right serves digital exploitation such as entertainment-on-demand platforms through the internet.



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PROPOSED CHANGES IN SA LEGISLATION (CONT.):

With respect to the Performer's Protection Act's ability to allow for the acknowledgement of the performer's Intellectual Property in the audio-visual fixation, The PMA strongly recommends that the **performers exclusive and moral rights** as stated in the Beijing Treaty are legally adopted.

The exclusive right to claim to be identified as the performer

The moral right to object to any distortion, mutilation or other modification that would be prejudicial to the performer's reputation, taking into account nature of the audio-visual fixations.

There are exceptions and in a free-market society parties are allowed to contract based on terms that they find best for their circumstances. Therefore The PMA understands that ratifying The Beijing Treaty won't necessarily guarantee these circumstances in all cases, but what we're asking for is that those rights to be acknowledged to such a degree that it can enable negotiations and facilitate fair and equitable remuneration for performers.

**The essence of a free-market system assumes equitable bargaining positions.
Under the current status quo, performers have very little bargaining power and, as such, are severely prejudiced in any negotiations.**



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PROPOSED CHANGES IN SA LEGISLATION (CONT.):

Moreover, we strongly advocate that these rights
are to be non-waivable in all cases, but may be transferred subject to negotiation of remuneration

If the economic, moral and exclusive rights are granted in our legislation, and are made non-waivable, then it paves the way for performers to be involved in negotiations and decisions pertaining to the use of their image in return for equitable remuneration.

Having the right is different to exercising it.



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SA PERFORMERS WORKING OVERSEAS VS WORKING IN SA (CONT.)

As an actor in the overseas motion picture, ***The Curious Case of Benjamin Button***, I had an unforgettable experience artistically, but most importantly financially. The remuneration was enough to put away savings for my future, not to mention the royalties which were paid to me yearly since 2010, by the production companies involved following the release of the movie in 2009. These royalties have been sustaining me for the last few years.

Thanks to the SAG-AFTRA Union representing U.S and non-U.S artists, for keeping track of my royalties, so that I can be compensated accordingly, and enjoy the fruits of my labour.

If South Africa, and by extension Africa, had a system of royalty remuneration of this kind, I believe, artists would live sustainably, boost the economy of its country, and not have a pauper's funeral

Rampai Mohadi



Rampai Mohadi
The Curious Case
of Benjamin Button



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SA PERFORMERS WORKING OVERSEAS VS WORKING IN SA

Full episodes of The Mating Game and Generations (in which I appeared in 2011 -2013) are available on YouTube. Colleagues have their work on international channels and friends in Jamaica regularly call me saying how much they enjoy Generations. Actors receive no residuals from these New Media/Internet, Broadcaster and Foreign Territory sales.

Residuals really are the bread and butter of the working actor's life.

It is a pleasure here in America to receive regular cheques from SAG/AFTRA for work I've done as it continues to find new audiences on streaming platforms, Internet and in foreign territories outside the US. Residuals are budgeted into the distribution sale so the misconception and fear that the fee comes out of Producer or Broadcaster's pocket simply isn't true. Nobody is poorer for having paid the actor beyond First Use.

I love South Africa. I am proud of the bravery and artistry of our storytelling. I chose to relocate to the US because I was genuinely tired of not only fighting for residuals but minimum rate cards, increases basic workplace safety and Intellectual Property ownership, to name a few issues.

I urge you to please pass the Performers Protection Amendment Bill.

Warmest Regards

Maggie Benedict

South African artist living and working abroad



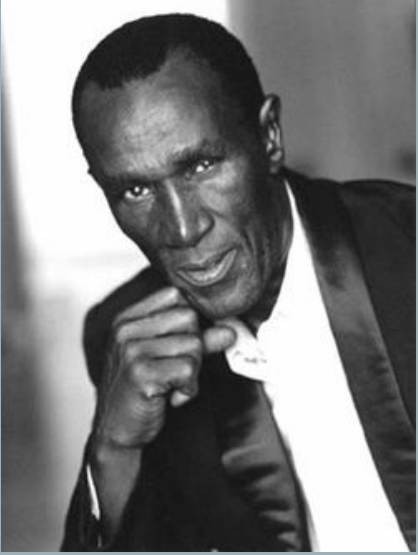
Maggie Benedict

The Good Doctor,
Queen of Katwe,
Generations,
Ashes to Ashes,
The Mating Game



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DEFICIENCIES IN SOUTH AFRICAN LEGISLATION SHOW PREJUDICE TO SA PERFORMERS (CONT):



The South African TV programme Shaka Zulu with actor Mr **Henry Cele**, was sold across the world and if his Audio Visual rights were recognized in South Africa, then legendary performers like Mr Cele would not have struggled to make ends meet.

Shaka Zulu TV series allegedly made an estimated R5Billion worldwide yet Henry Cele died poor



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DEFICIENCIES IN SOUTH AFRICAN LEGISLATION SHOW PREJUDICE TO SA PERFORMERS (CONT):

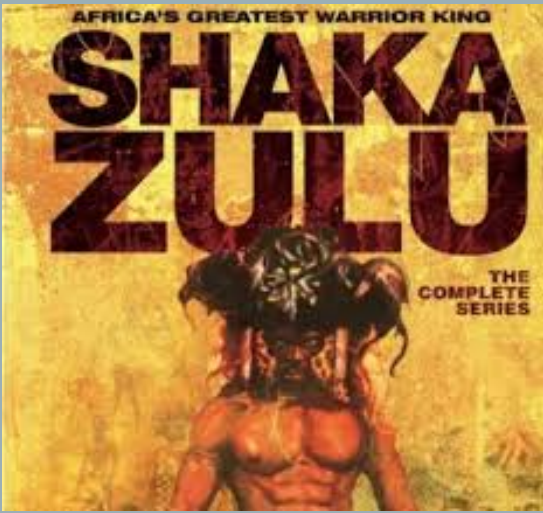
“...Are those actors gonna be happy to just be on tv but not be able to afford a car loan, mortgage or even medical aid when the show is making millions for the bosses.

Shaka Zulu star, Henry Cele, died in 2007 after being hospitalised for two weeks with a chest infection. At 58, he is reported to have been a far cry from the regal king he immortalized on screen. He is said to have died a poor man. As his career took a nose-dive Cele retreated from his suburban home in Glenmore, South of Durban, and went back to Kwamashu township where he spent his last days....”

<http://www.philmphelablog.com/2014/08/shaka-zulu-tv-series-made-estimated.html>



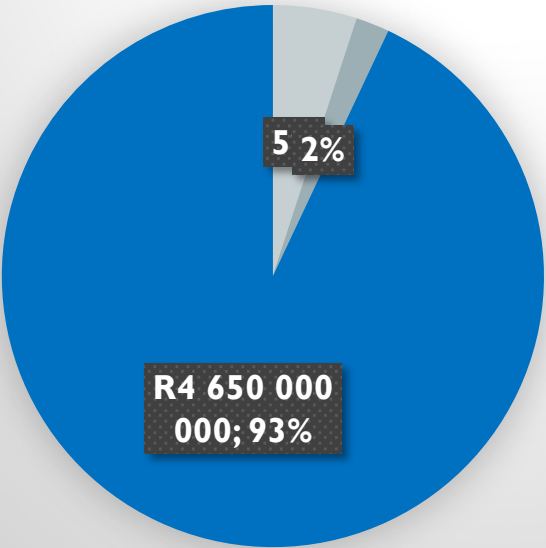
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SHAKA ZULU (1986):

Production Cost:	R10 000 000,00	R10 Million	
Alleged Profit:	R5000 000 000,00	R5 Billion	
10 Episodes			
10 Lead Cast members			
@ 5% royalty of Box Office profits =		R250 000 000,00	
		R25 Million	per performer
89 Support Cast other		R100 000 000,00	
@ 2% royalty of Box Office Profits=		R1.1 Million	per performer

Alleged Profit: R 500,000,000



- Lead Royalties (R 25,000,000 per performer)
- Support Royalties (R 1,123,595.51 per performer)
- Remaining profit

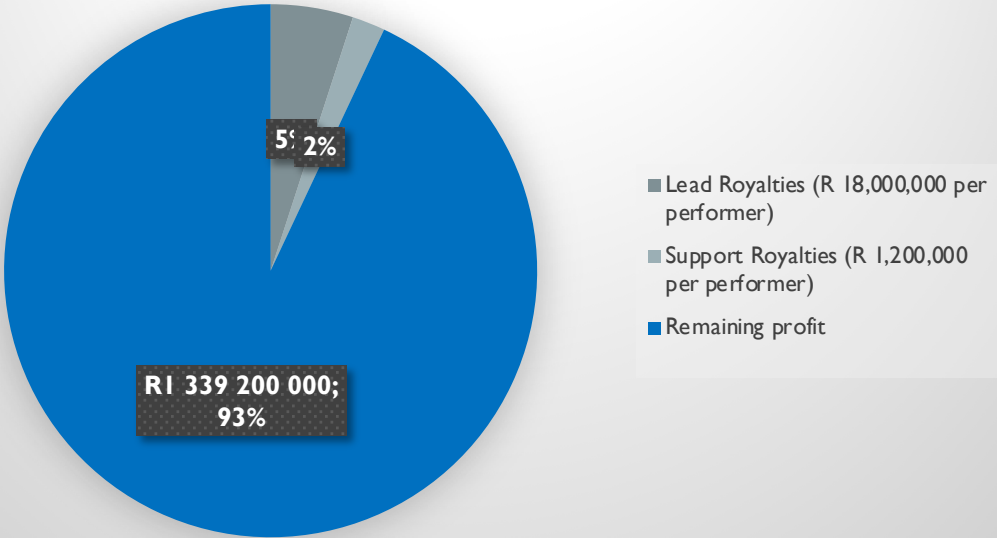




DISTRICT 9 (2009):

Box-Office Return :	R 680 000 000,00	(\$210 000 000.00)	
Production Budget:	R240 000 000,00	(\$30 000 000.00)	
Profit:	R 440 000 000,00		
4 SA cast members in lead roles			
@ 5% royalty of Box Office profits =		R72 000 000,00	
		R18 Million	per performer
24 SA Cast in supporting roles			
@ 2% royalty of Box Office Profits=		R1.2 Million	per performer

Profit: R 1,440,000,000



District 9

2009 · Fantasy/Thriller · 1h 53m

OVERVIEW

CAST

REVIEWS

TRAILERS & CLIPS

SIMILAR MOVIES



Sharlto Copley

Wikus Van D...



Jason Cope

Grey Bradna...



Vanessa Haywood

Tania Van De...



David James

Koobus Venter



Nathalie Bolt

Sarah Living...



William Allen Young

Dirk Michaels



Sylvaine Strike

Dr Katrina M...



Kenneth Nkosi

Thomas



Nick Blake

Francois Mor...



John Sumner

Les Feldman



Jed Brophy

James Hope



Mandla Gaduka

Fundiswa M...



Robert Hobbs

Ross Pienaar



Eugene Khumbaniw

Obesandjo



Greg Melvill-Smith

Interviewer



Vittorio Leonardi

Michael Bloe...



Nick Boraine

Craig Weldon



Anthony Bishop

Paramedic



Mampho Brescia

Reporter



David Clatworthy

MNU Doctor ...



Melt Sieberhagen

Anton Grobler



Andre Odendaal

Mike Van Ker...



Norman Anstey

MNU Lead M...



Siyabonga Radebe

Obesandjo's ...



Brandon Auret

MNU Mercen...



Sibulele Gcilitshana

Ü Günters W...



David Dukas

MNU Mercen...



Matt Stern

MNU Mercen...



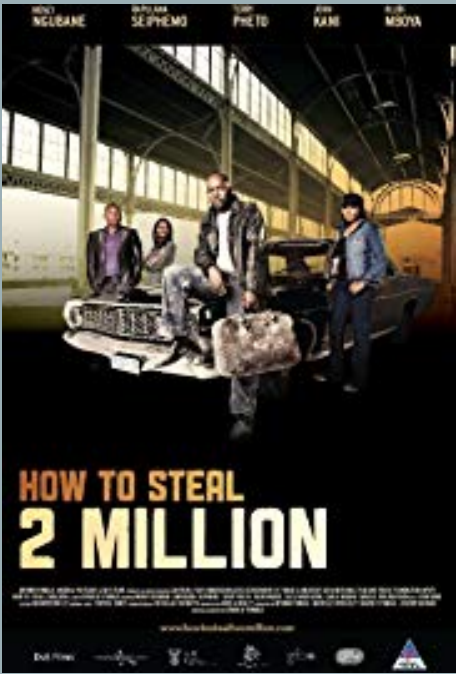
Jacques Gombault

MNU Mercen...



Daniel Hadebe

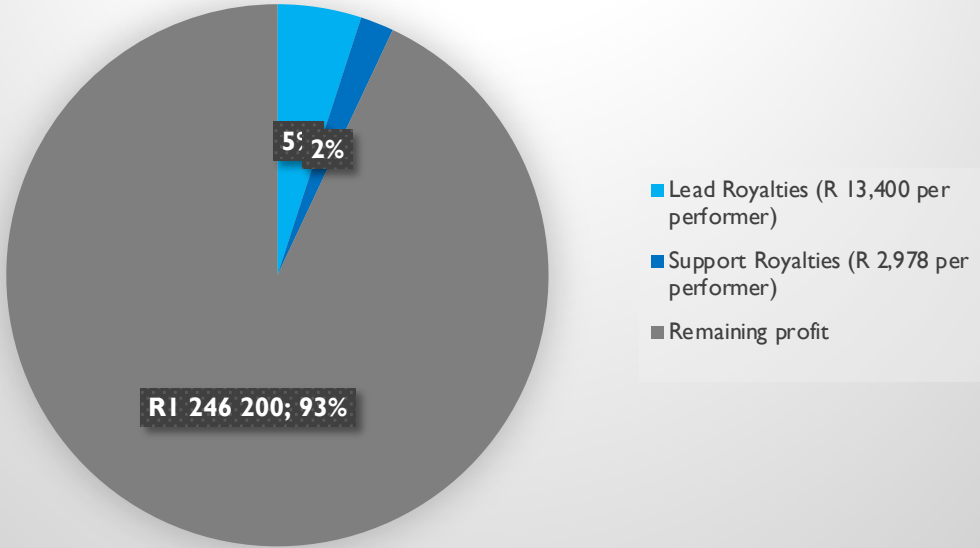
MNU Guard #1



HOW TO STEAL 2 MILLION (2011):

Production Cost:	R1 100 000,00	R1.1 Million	
Box Office Return:	R 2 440 000.00	R2.4 Million	
Profit:	R1 340 000.00	R1.3 Million	
5 Lead Cast members			
@ 5% royalty of Box Office profits =		R67 000,00	
		R13 400,00	per performer
9 Support Cast		R26 800,00	
@ 2% royalty of Box Office Profits=		R2 978,00	per performer

Profit: R 1,340,000



How to Steal 2 Million

2011 · Thriller/Drama · 1h 28m



OVERVIEW

CAST

REVIEWS

TRAILERS & CLIPS

SIMILAR MOVIES



Terry Pheto

Olive



Menzi
Ngubane

Jack Ngubane



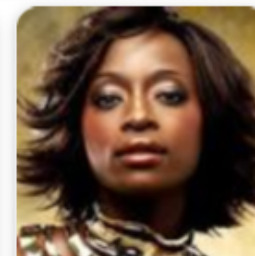
Rapulana
Seiphemo

Julius Twala ...



John Kani

Julius Twala ...



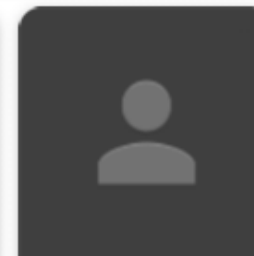
Hlubi Mboya

Kim



Sello
Motloun

Tembe



Carlo
Radebe

Vusi



Marcel Van
Heerden

Lt. Du Toit



Lucia
Mthiyane

Olive's mother



David
Sherwood

Pawnbroker

BEYOND THE BILL

The Personal Managers Association believes that if the above is incorporated into the Performer's Protection Act, that it could provide a solid and strong base for correcting some of the injustices that performers are faced with.

By ratifying, awarding and recognizing the rights and provisions set out in The Beijing Treaty, South Africa can enhance the lives of its performers. Amending the current Bill is only the beginning, but it's the most important.

Further possibilities with regards to other protective measures for performers are open to us for research and implementation.

This could potentially include:

- Legislated **Collective Bargaining Bodies**, in the absence of protection from the Department of Labour for freelance performers
- The establishment of a **Regulatory Body** which could be mandated to ensure that foreign films made in South Africa, add value to our industry, instead of only extracting from it.
- **Incentive Schemes** for foreign producers to collaborate with local talent provided that a portion of local talent is cast in substantial roles



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BEYOND THE BILL (CONT.):

The establishment an effective dispute resolutions industry body

Fair and Best Practice Regulations and contracts

The establishment of
a Collecting Society (CMO)

independent Non-Profit Collecting Society through a transparent process of broad stakeholder engagement. This CMO will have a mandate to monitor, collect and distribute payments such as royalties for the sale, re-sale, rental and licensing of audio-visual fixations. This Collecting Society also needs to be affiliated to an internationally recognized leading world collecting society organization. International CMO affiliation would enable reciprocal agreements for SA actors to claim for international exploitation in accordance with worldwide accepted standards.

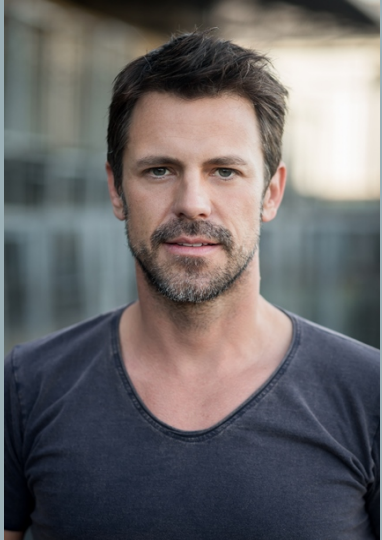
We call on the Department of Labour, in consultation with all industry stakeholders, to accurately define the labour status of performers as Labour defines performers as employees and SARS as independent contractors



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BEYOND THE BILL (CONT.):

“The value in an actor’s work lies not in their performance, but rather in the exploitation of that performance.



The more our faces are on screen, the more we become associated with a particular character or product, making it exponentially more difficult to book other roles. It is for this reason that international union actors get paid residuals for each time their likeness is exploited. Residuals allow actors to achieve some form of financial stability by having an income stream between productions. It is an equitable and fair arrangement that contributes to the stability of the industry as a whole. I for one would have been forced to get a job outside of acting if it wasn't for the fact that I earn residuals on work that I've done here in The United States.”

Colin Moss (*Black Mirror*, *Cape Town* (series), *Momentum*, *Isidingo*)



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IMPACT OF THE BILL:

Copyright and its various aspects is ever-evolving

Technology and new forms of exploiting the work of performers enables more people to have access to the fixations and performance

The economic, moral and exclusive rights of musicians, authors, visual artists, and publishers are already recognised and fairly remunerated because there are laws that enable that

The PMA is not proposing for the act to be amended in such a way that will negatively impact other sectors of the industry, and therefore calls for careful **research, consultation and planning**, but we cannot, and as society, should not allow the current unjust practices to continue

Our industry will be in a better **position to compete** in the international market, to further positively impact the performing arts in general, and also **align our industry** with international best practices and standards.



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A country's storytellers are a vital part of our landscape, let's help to end the exploitation, sanctioned by inadequate and seriously outdated current legislation and get performers the protection they deserve.



“...it’s important that we have this bill amended; not only for the sake of the South

African Artist but for the sake of South African Art.”

***James Alexander**, South African actor living and working in The USA (Isidingo, The Wild, Homeland, Roots, Scandal)*

Thank You



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