



14<sup>th</sup> September 2018

## **IPO COMMENT ON SPECIFIC CLAUSES OF WORKING DRAFT OF THE PERFORMERS' PROTECTION AMENDMENT BILL (2017) [B13-2017]**

The IPO represents over **80%** of active film and television **producers** creating TV shows for millions of South Africans and films that travel the world.

As a brief overview, we must remember that it is an industry that is **fragile**: it faces intense international competition, fragmenting audiences, dropping advertising revenues, a public broadcaster in perpetual crisis and a monopolistic broadcast environment. Most independent producers struggle to survive from year to year. Since 2008, inflation adjusted budgets for commissions from broadcasters have nearly halved. Regulation and policy should therefore aim to support the industry to deal with these challenges in order to create jobs, do business, bring in investment and drive exports.



INDEPENDENT  
PRODUCERS ORGANISATION

*The IPO represents, protects and promotes the interests of independent South African film, television and video producers in South Africa.*

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## **CONTEXT: CERTAINTY & CONFIDENCE**

Ref: the dti 2017/2018 Annual Incentive Report - IDAD

Investment:

R900mill down from R3.8billion to R2.9billion (international film down by R800mill)

Jobs:

1,647 down from 6,029 to 4,382

*Reference:*

- 1. The Incentive development and Administration division (IDA) 2017/18 Annual Incentive Performance Report*
- 2. The Incentive development and Administration division (IDA) 2016/17 Annual Incentive Performance Report*

### **IPO Executive Committee 2018/19**

Rehad Desai (Chairperson), Neil Brandt(Deputy Chairperson), Michael Auret (Secretary), Shelli Miller(Treasurer), Katleho Ramaphakela , Nimrod Geva, Zikethiwe Ngcobo, Rolie Nikiwe,

Rudi van As.



With respect to the Performer's Protection Amendment Bill, the IPO believes that Performers deserve **fair and equitable compensation** for the enormous value they bring to the creation of television and films.

The IPO concerns are as follows:

**Section 1 (d) Definition of Performer (page 3)**

Section 1 d is amended “*by the substitution for the definition of ‘performer’ of the following definition:*

*‘performer’ means an actor, singer, musician, dancer or other person who acts, sings, delivers, declaims, plays in, or otherwise performs*

*literary, musical or artistic works;’*”

‘Performers’ are therefore defined in such a broad way as to include ‘extras’ (the individuals who fill out city scenes in the background, for example). Extras do not receive residuals anywhere in the world and besides being an unsustainable financial burden it would also be an unbearable administrative burden to co-ordinate payments to hundreds of individuals. We propose the legislation adopt the standard definition of performers as per the Beijing Treaty on Audiovisual Performances to bring it in line with global arrangements.



### **Section 3A “Transfer of rights” (page 4)**

“3A. Where a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorisation granted to a performer in terms of section 3(4)(c), (d), (e), (f) and (g) shall be owned or exercised by, or transferred to the copyright owner of such audiovisual fixation, or his or her licensee, subject to a **prescribed written contractual agreement** with the performer which shall give the performer the right to receive royalties or a fair equitable remuneration, whichever applicable, for any use of the performance: Provided that such agreement between the parties shall be valid for a period of **25 years** from the date of commencement of the agreement and may be **novated by mutual consent.**”

**“prescribed written contractual agreement”** - The word ‘prescribed’ suggests that the dti or some other government body will be determining various contractual elements. This is not feasible in a business where contracts are complex, and highly specific to each individual production because they are based on numerous variables (budget, territories, prominence of the performer, etc) and would be totally impractical. We do not support overregulation by government and worry that the amendment bill seeks to have prescribed royalties set by the dti, giving power to dti officials who are not experts in the film business to determine contract terms.

**“25 years”** – What occurs after 25 years?

**“Novated by mutual consent”** – What novation is referred to?



## Section 4 (Section 5 of principal Act) (pages 5 – 6)

### Section 4 (c)

*“(1A) A person who intends to [broadcast] ...must give the copyright owner, performer or collection society, a notice in the prescribed manner of his or her intention to perform such acts, indicating where practical, the date of proposed performance...”*

Notifying performers ahead of a broadcast and then having to get their permission is not feasible. It would mean that any individual in the cast could hold the entire production to ransom and demand unreasonable terms because they individually can prevent the entire show from airing. This would also contradict 3A, which provides for the transfer of the rights to the producer, without further strings attached.

**4. (c) (1D) “The Tribunal must adjudicate such matter as soon as is reasonably practicable and where possible, before the performance which is the subject of the application takes place and may make any order it deems fit...”**

The proposal for a tribunal to litigate the minutiae of contract is worrying. The added regulatory complexity and uncertainty this involves will hinder our ability to function, contract freely and leave producers and performers to negotiate.