



10 September 2018

To: Hon J Fubbs

Chairperson of the Portfolio Committee on Trade and Industry

For attention: Mr. A. Hermans at ahermans@parliament.gov.za

And: Mr T Madima at tmadima@parliament.gov.za

Dear Honourable Fubbs,

**WRITTEN SUBMISSION BY THE INDEPENDENT PRODUCERS' ORGANISATION (IPO)
COMMENT ON SPECIFIC CLAUSES OF WORKING DRAFT OF THE PERFORMERS'
PROTECTION AMENDMENT BILL (2017) [B13-2017]**

We are the independent producers organisation, representing over 80% of active film and television producers creating TV shows for millions of South Africans and films that travel the world.

In this written submission, we would like to focus on some of the more practical implications of the proposed amendments for the industry itself.

As a brief overview, we have to 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.

With respect to the Performer's Protection Amendment Bill, we as IPO, as a matter of principle, believe that Performers deserve fair and equitable compensation for the enormous value they bring to the creation of shows and films.



Our concerns are as follows:

1. Prescribed terms:

Section 3A's amendment refers to a "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.

2. The Tribunal

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

3. Definition of Performer

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 royalties 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.



4. Consent of the performer for broadcast:

Amendment of section 5 of Act 11 of 1967, as amended by Act 8 of 2002

4. Section 5 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) without the consent of the performer—

(i) broadcast or communicate to the public an unfixed performance

or performance fixed in an audiovisual fixation of such

performer, unless the performance used in the broadcast or the

public communication is itself already a broadcast 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.

We once again request an opportunity to present our arguments orally to the committee,

Best,

Nimrod Geva

Independent Producers Organisation, EXCO member