



Copyright and Performers Protection Amendment Bills

11 August 2021



Team

NAME

POSITION

Collen Dlamini

Executive Head: Corporate Affairs, MultiChoice

Aynon Doyle

Head: Policy Research, MultiChoice

Wendy Rosenberg

Director, Werksmans Attorneys



Introduction

MultiChoice is a true South African success story to be celebrated

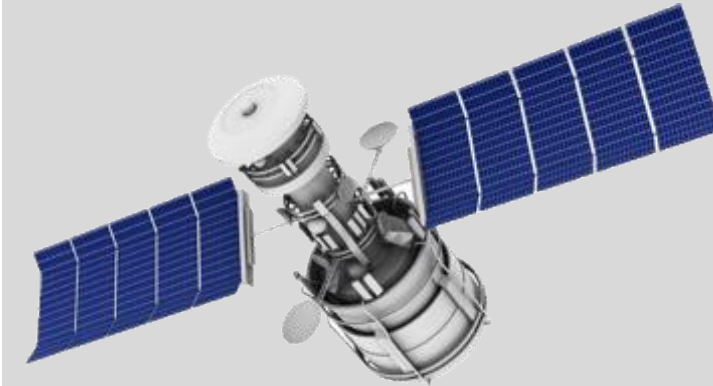
A local, homegrown company that has grown organically as a result of its commitment to:

- Investing significantly over time, while actively managing cost efficiencies, in:

Local and international content



Satellite and broadcast infrastructure, technology and distribution systems



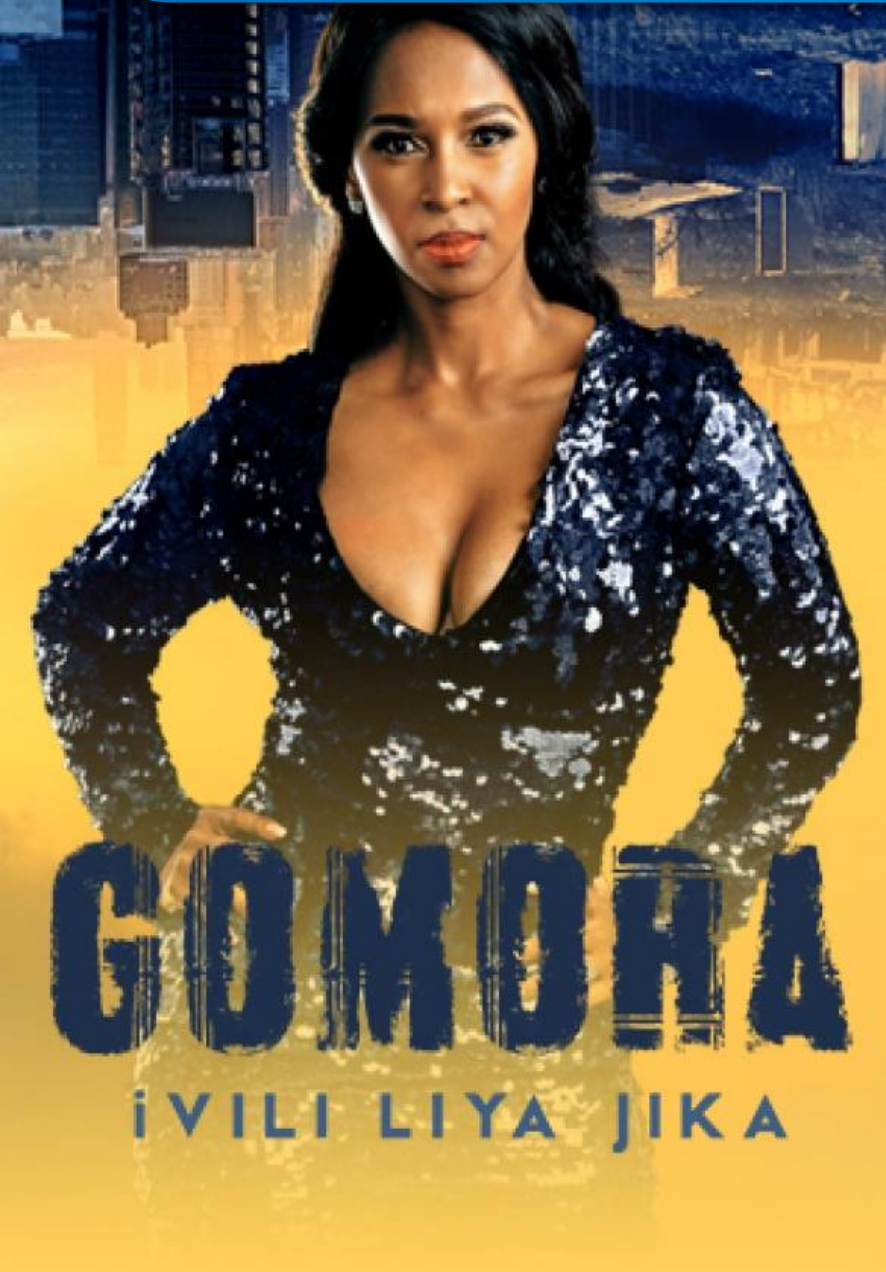
Employment, skills development and transformation of the industry



- Taking risks to develop and grow its business when other companies were reluctant to do so.

MultiChoice is a significant direct and indirect contributor to the industry, various parts of the value chain, other sectors and the SA economy

MultiChoice is an Investment and Transformation-Driven Company



Investment: supply chains, local content and development of talent (FY2021)

Group created

4567

hours of local content
on an annual basis

1 197

accredited installers
employing 2 924 technicians

42%

1H FY21

Local content as % of GE
content spend

R2.9bn

invested in
local decoder
manufacturing

Skills Investment



MultiChoice Talent Factory

86 GRADUATES, 15 CURRENT

Scriptwriting Incubator

12 CURRENT

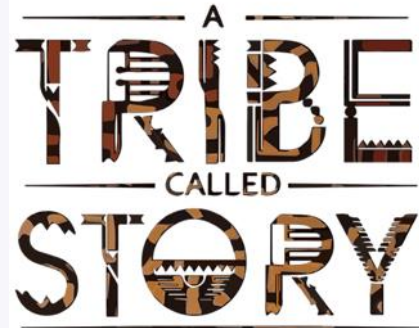
AFDA Bursaries

25 BURSARIES



114 Independent Production Companies

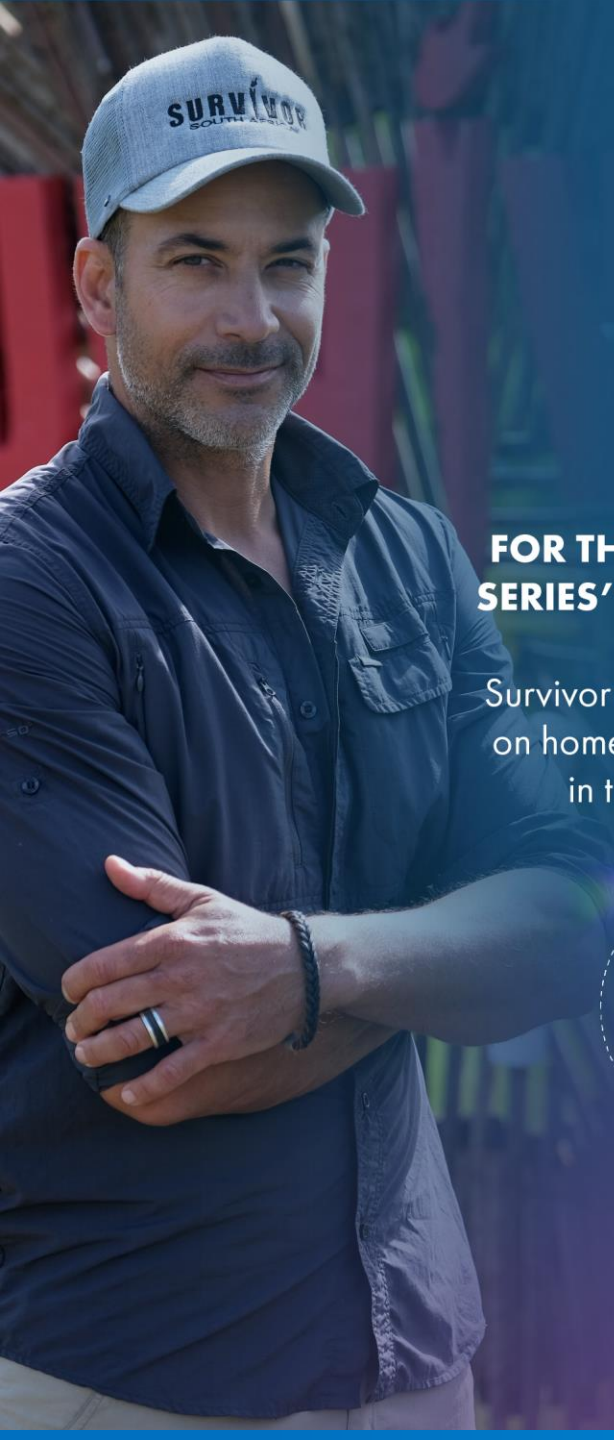
Our contribution to economic development and social impact



R80M

Set aside for production staff to cover salaries during March and April due to impact of COVID-19 lockdown.





CASE STUDY – POSITIVE SPINOFFS OF INVESTMENT IN CONTENT



The World's Greatest Game creates jobs, transfers world-class skills and donates essential materials to local causes.



FOR THE FIRST TIME IN THE SERIES' 8-SEASON HISTORY

Survivor South Africa was filmed on home soil on the Wild Coast in the **Eastern Cape**



THIS INNOVATIVE PARTNERSHIP WITH THE EASTERN CAPE DEVELOPMENT CORPORATION (ECDC) SAW:



55 jobs were held by women

103
Jobs created



saw a substantial financial injection into the region



60 jobs were held by local youth



R2 MILLION

investment by the ECDC went towards the production of Survivor South Africa

Resulting in an economic impact value of more than

R10 MILLION



"Through these strategic partnerships, the objective is to develop the film industry value chain to realize continuous investments, job creation and skills development within the Eastern Cape" ECDC

Promoting investment in Film and TV

- Continued investment in content requires a modern, stable and cohesive copyright regime
- Current copyright legislation is outdated and must be updated
- But the Bills as currently drafted won't take our creative industries forward
 - undue complexity and rigidity
 - will impact negatively on contracting, financing, dispute resolution and remuneration to performers and other role players
 - will have the unintended effect of undermining investment in film and TV



The advertisement features two young women, one holding a large professional camera and the other holding a smaller camera, both smiling. They are wearing purple polo shirts with a logo. The background is blue with geometric patterns and yellow decorative lines. The text 'MULTI CHOICE TALENT FACTORY' is at the top, and 'ARE YOU THE FUTURE OF FILM AND TELEVISION?' is at the bottom.

MULTI CHOICE
TALENT FACTORY

ARE YOU THE FUTURE OF
FILM AND TELEVISION?

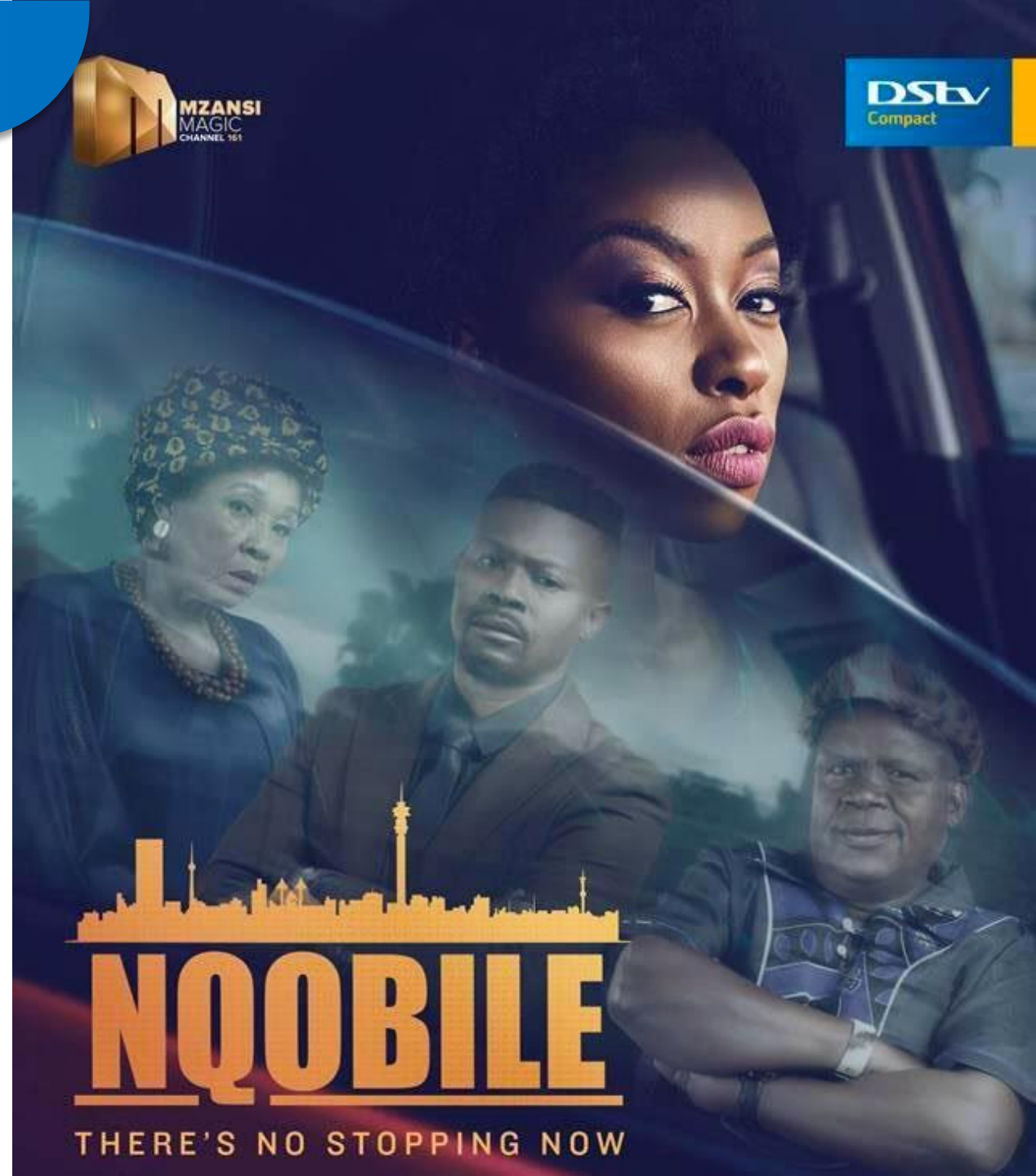
Addressing performer concerns

- We welcome efforts to improve the well-being of performers
- Performers, along with writers, crew, producers and composers are critical players in the content value chain
- The Bills as currently drafted won't improve the position of performers, will instead introduce new problems:
 - For example:
 - No flexibility on payment regimes
 - No flexibility on contractual terms
 - Onerous and unworkable reporting obligations etc.
- Danger that all role-players, including performers will be worse off



Process to Date Not Conducive to Achieving Objectives

- Must focus on getting the fundamentals right – in their current form the Bills don't do that
- Since the start, this Committee has been expected to perform a near impossible task
 - Highly specialized subject matter with insufficient specialist input
 - Initial flawed drafting from department
 - No comprehensive impact assessment conducted
 - Process overtaken by fair use discussions
 - Time constraints and piece-meal approach
 - Divisive atmosphere created by stakeholders “its all or nothing”
- Stakeholders such as MultiChoice are keen to contribute constructively to developing legally and technically sound Bills that will achieve objectives in line with best practice
- Unfortunate that stakeholders have been given truncated opportunities to comment meaningfully – short time to comment, invitation to comment limited to narrow topics, not all stakeholders heard - lost opportunity to improve Bills



The Opportunity

- Flawed Bills and process have already delayed achievement of Bills' objectives
- It is unfortunate that Bill had to be sent back – could have been avoided if prior process had engaged meaningfully
- Committee now has opportunity and responsibility to:
 - Hear stakeholder input
 - Remedy Bills' flaws
 - Avoid Bills getting sent back again and risk of further challenges, litigation and delays in achieving Bills' objectives
- We urge the Committee not to rush through flawed legislation – take the opportunity to put in place fit for purpose copyright legislation
- Need to revisit the Bill as a whole, not just deal with issues related to fair use and international treaties





Issues arising from compliance with international treaties

The Three Step Test

- Most international instruments since the Berne Convention have incorporated versions of the 3 step test (e.g. TRIPS, WCT, WPPT, etc.), it has even found its way into national legislation of countries (e.g. China, Australia, etc.)
- Even when not explicitly incorporated in national legislation, judges rely on the 3 step test when applying their country's copyright laws
- Copyright Bill as currently drafted does not accord with the 3-step test as it prejudices the legitimate interests of creators and rights holders
- If enacted in its current form the final Act or sections thereof are likely to be challenged in court and afterwards there will be decades of court cases as matters that could have been addressed clearly in legislation will have to be thrashed out in in civil litigation between rights holders and those alleging fair use.

Berne Convention, was the first to enact the 3 step test

"It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works
[a] in certain special cases, provided that
[b] such reproduction does not conflict with a normal exploitation of the work and
[c] does not unreasonably prejudice **the legitimate interests of the author.**"

Technology Protection Measures (TPMs)

- TPMs give an example on how broadly exceptions have been crafted in the Bill to the point that they totally undermine the protection that was supposedly created by it
- There are broadly speaking two types of technological protection measures, namely "access control" TPMs and "copy control" TPMs.
- The Copyright Bill was supposed to be updated to reflect Treaty obligations under Art. 11 of the WCT and Article 18 of the WPPT to provide adequate legal protection and effective legal remedies against the circumvention of TPMs
- Any exceptions permitted by law to circumvent TPMs would also be subject to the 3 step test
- In line with the WCT and the WPPT obligations, the Copyright Bill (by way of clause 27) inserts s28O into the Act on prohibited conduct in respect of TPMs



Proposal on TPMs

- To avoid general harm to the effectiveness of TPMs, we proposed narrowing the circumstances in which a circumvention of TPMs is permitted to:
 - law enforcement purposes in accordance with applicable laws;
 - where the owner of TPM has consented;
 - where ordered by a court or the Tribunal after the owner has refused access; and
 - in the case of s19C and s19D by persons specifically authorised to do so by government.





Conclusion

Way forward on the Bills

- MultiChoice is thankful for the opportunity to make these submissions
- We urge the committee to reconsider the current approach to the Bills
 - Rather consider the Bills holistically, not just isolated sections
 - Allow for more time on consultations
 - If necessary start again – its important to get the fundamentals right
- We are available to assist the committee

“
**RESET,
REFOCUS,
RESTART.**
”



The MultiChoice logo is centered on a white background. It features a stylized sunburst icon composed of ten colorful, overlapping triangular shapes in shades of purple, blue, green, yellow, orange, and red. Below the icon, the word 'MULTIChoice' is written in a bold, black, sans-serif font. Underneath that, the tagline 'ENRICHING LIVES' is written in a smaller, black, all-caps, sans-serif font.