

**Copyright Amendment Bill:
Portfolio Committee
Presentation**



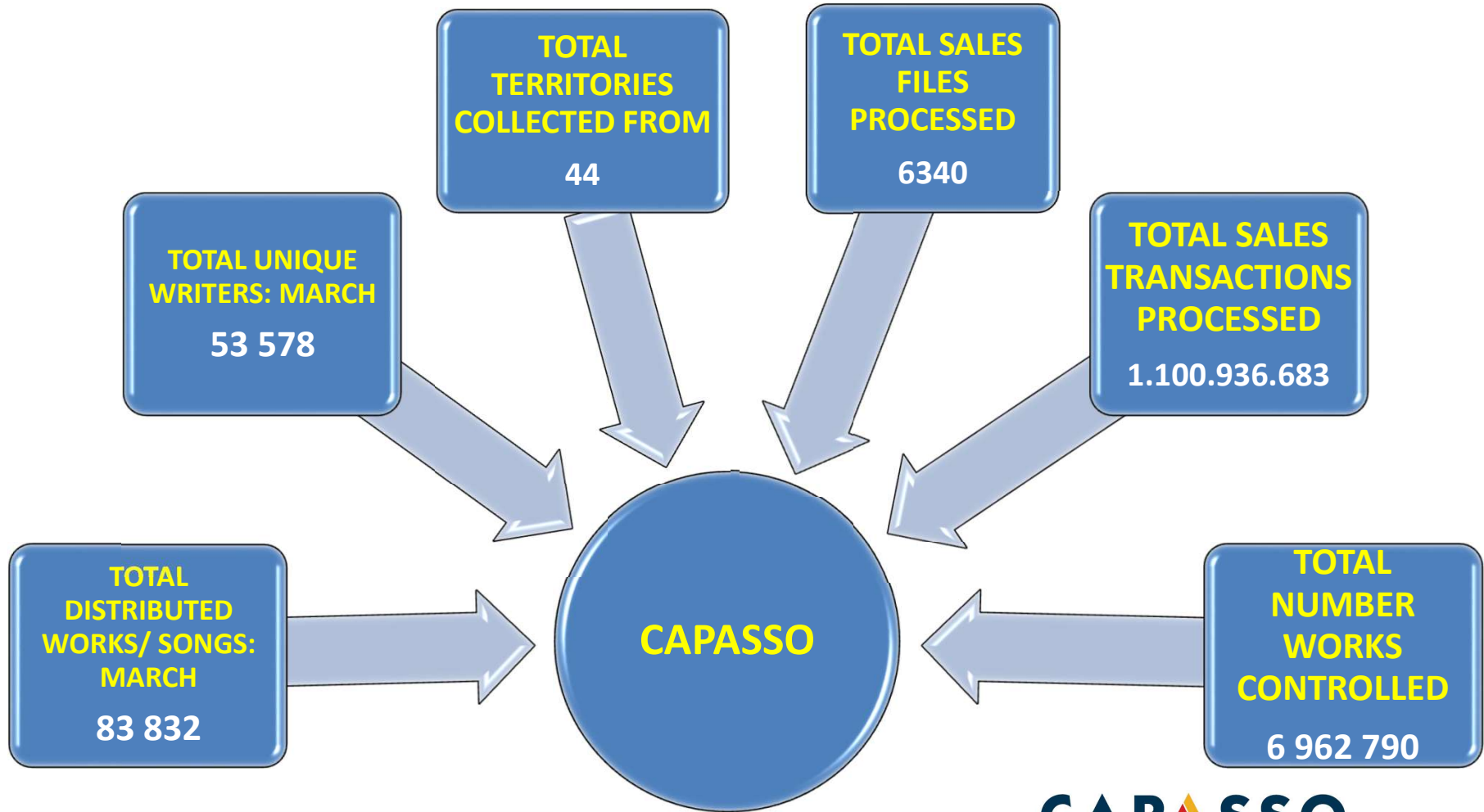


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CAPASSO By The Numbers



“Ephemeral Provisions” (12B)

- It is our averment that this provision currently serves no legitimate purpose within the South African context and should be removed altogether.
- It is a reiteration of section 12(5) of the current Act which is based on Tunis Model Law.
- Due to this provision, songwriters in South currently receive **ZERO** rands from radio broadcasters for the reproduction of their songs.
- It unfairly prejudices the rights of songwriters and has denied them legitimate earnings for years.
- Radio broadcasters have been able to rely on this provision in order to deny paying royalties to songwriters for exploiting their works.



Temporary/ Incidental Reproduction (12C)

- CAPASSO currently collects over a quarter billion rands of revenue on behalf on songwriters
- Close to eighty percent (78.4%) of ALL CAPASSO collections are from digital services which are licensed for making reproductions of works.
- The current clause as couched threatens that revenue stream for CAPASSO members.
- The EU has attempted to deal with this provision by expressly stating that it is subject to the three step test so as to not wipe out well established income streams like the one CAPASSO collects.
- Keeping this clause would adversely affect the livelihoods and the economic wellbeing of songwriters
- It is our belief that it should be removed or subjected to the three step test expressly



■ ■ 2. General Exceptions: Fair Use (12A)

- The Bill seeks to introduce a general exception alongside the limited exception of “fair dealing”. The use of both concepts is fundamentally illogical
- Fair dealing should be retained as the basis for exceptions in our copyright law as it provides the certainty required by our environment however, flexibility can be increased by the introduction of other specific exceptions like parody and satire.
- The introduction of fair use exception into South African law will disadvantage composers and authors as it requires constant litigation, the cost of which composers and authors will not be able to sustain (leaving them at the mercy of multinational companies with financial power to litigate).

■ ■ 2. General Exceptions: Fair Use (12A)

- Even in the jurisdictions where fair use is most entrenched like the USA, access to courts for the everyday creative is so difficult such that they have introduced a new concept of a Copyright Small Claims Court (CASE Act)
- The sheer volume on content on digital platforms makes it impossible for creators to effectively control how their works are used.
- 300 hours of content are uploaded onto YouTube **every MINUTE**
- Litigating even just a portion of that would be an unfair burden on creators.
- There is already a power imbalance that modernday creatives find themselves in in relation to UGC platforms.
- The laws should thus be geared to correcting that imbalance rather than exacerbating the condition of creators

Libraries, Archives, Museums and Galleries (19C)

- This exception is found in the Bangui Agreement, however, unlike in that Agreement, the Bill fails to recognise the need to balance the exceptions with the necessary compensation for rightsholders.
- Generally; territories that include such exceptions balance it with the introduction of what is known as a private copying levy.
- This levy offsets the loss that creators will suffer whilst allowing for the specific uses to be introduced as exceptions.
- Given the emphasis on increasing exceptions, it is crucial that we introduce a private copy levy system, which is aimed at minimizing the impact of increased exceptions for rights holders.
- *British Academy of Songwriters, Composers and Authors Musicians' Union & Others v Secretary of State for Business, Innovation and Skills & Another*, where the Supreme Court in that jurisdiction found that private copying exceptions had to provide for fair compensation.

■ ■ Songwriter Comments





THE END

THANK YOU

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