

COSATU Submission:
Copyright Amendment Bill

09 July 2021



COSATU

Submitted to:

**Portfolio Committee:
Trade, Industry and Competition**

**National Assembly
Parliament**

Republic of South Africa

1. Introduction

COSATU welcomes President Ramaphosa's referral of the Copyright Amendment Bill back to Parliament to address concerns with regards to its provisions being in line with the Constitution and with regards to whether its tagging and processing by the 5th Parliament was correctly done.

COSATU supports the Copyright Amendment Bill in principle. We applaud its progressive objectives but agree with the President that its provisions and processing need to be in line with the Constitution.

COSATU is concerned that the Portfolio Committee call for comments only speaks to Clauses 13, 19 and 20 but does not speak to Clauses 6, 7 and 8 which were also highlighted by the President with regards to concerns about their constitutionality.

2. COSATU Support for the Objectives of the Copyright Amendment Bill

COSATU supports the Bill in principle. It is a progressive Bill that in particular seeks to provide greater access to educational materials for persons with visual disabilities in particular and indigent students and learners in general.

The lack of access to affordable educational materials is a major obstacle to learning to millions of learners and students from historically disadvantaged communities and the poor in general. It is a massive burden to persons with disabilities.

COSATU appreciates many of the provisions in the Bill that seek to protect the rights of composers, performers and authors.

3. COSATU's Concerns with Regards to the Bill's Provisions

COSATU shares the concerns of the President with regards to clauses in the Bill that may not pass constitutional muster.

The Federation's concerns are threefold.

First that the retrospectivity of the Bill's provisions will not pass constitutional muster as highlighted by the President.

Second that Clauses 13, 19 and 20 whilst correct in intention do not provide for sufficient protection to composers, performers and authors. This may have the unintended consequence of depriving them of royalties due. South Africa has born witness time and again to composers, performers and artists who have died destitute whilst companies have grown wealthy at their expense.

COSATU Proposal

- That Clauses 6A, 7A and 8A be amended to ensure that they are in line with the Constitution.
- That Clauses 12 A, B, C and D and 19 B and C be amended to provide fair use protections for composers, performers and authors whilst simultaneously

ensuring fair access to materials by learners, students and educational institutions.

4. COSATU Concerns with Regards to Processing of the Bill

COSATU welcomes Parliament's retagging of the Bill inline with the request by the President and COSATU. We trust that this will include the correct processing of the Bill in the NCOP.

The Federation is concerned that the call for adverts by the Portfolio Committee restricted public comments in two regards.

First it referred only Clauses 12 A, B, C and D and 19 B and C. It did not refer to Clauses 6A, 7A and 8A, despite the President highlighting concerns with regards to their constitutionality. No explanation has been provided in this regard.

COSATU is also concerned that the NCOP be given sufficient space to undertake public consultation on the Bill in order to redress the incorrect tagging by the 5th Parliament. Failure to do so may unintentionally expose the Bill to further litigation and delays.

COSATU Proposal:

- Public comments be extended to Clauses 6A, 7A and 8A in line with the President's referral.
- The NCOP be given sufficient space to undertake public consultation on the Bill in order to redress the incorrect tagging by the 5th Parliament.

5. Conclusion

COSATU supports the speedy passage of the Copyright Amendment Bill. It will play a key role in opening the doors to education to the poor and those with disabilities.

The Federation welcomes the referral of the Bill back to Parliament to ensure its correct processing and that its provisions are in line with the Constitution.

It is critical that the Constitutionality concerns of Clauses 6A, 7A, 8A, 12 A, B, C and D as well as 19 B and C be addressed. The Federation's concern in this regard is that they be in line with the Constitution and that they provide sufficient protection to the rights of composers, performers and authors to earn a living whilst at the same time providing access to materials to learners, students and educational institutions.

COSATU is concerned that the Portfolio Committee has restricted comments to Clauses 12 A, B, C and D and 19 B and C but has excluded Clauses 6A, 7A and 8A despite the President's referring these Clauses as well.

The NCOP needs to be given sufficient space to undertake meaningful public participation on the Bill too.

To protect the Bill and the rights of composers, performers and authors, these amendments and processes need to be undertaken.

Thank you.



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