**Second Report of the Portfolio Committee on Trade and Industry on the President’s reservations on the Performers’ Protection Amendment Bill, dated 10 June 2022**

The Portfolio Committee on Trade and Industry, having reconsidered the Performers’ Protection Amendment Bill [B24B-2016] (retagged as a sec 76 Bill) (*Announcements, Tablings and Committee Reports*, 18 June 2021) and following its report to the National Assembly (*Announcements, Tablings and Committee Reports*, 19 May 2021, p 89-91) on how it intended to address the President’s reservations on the constitutionality thereof (*Announcements, Tablings and Committee Reports*, 24 June 2020, pp 3-13), reports as follows:

The Bill seeks to amend the Performers’ Protection Act, 1967 (Act No. 11 of 1967) so as to insert, delete or substitute certain definitions; to provide for performers’ economic rights; to extend moral rights to performers in audiovisual fixations; to provide for the transfer of rights where a performer consents to fixation of a performance; to provide for the protection of rights of producers of sound recordings; to broaden the restrictions on the use of performances; to extend the application of restrictions on the use of performances to audiovisual fixations; to provide for royalties or equitable remuneration to be payable when a performance is sold or rented out; to provide for recordal and reporting of certain acts and to provide for an offence in relation thereto; to extend exceptions from prohibitions to audiovisual fixation and sound recordings and include exceptions provided for in the Copyright Act, 1978 (Act No. 98 of 1978); to provide for the Minister to prescribe compulsory and standard contractual terms as well as guidelines for a performer to grant consent under this Act; to provide for prohibited conduct and exceptions in respect of technological protection measures and copyright management information respectively; to provide for further offences and penalties; to substitute certain expressions; to provide for transitional provisions; and to provide for matters connected therewith.

The President’s reservations referred, among others, that the Bill may not comply with international treaty obligations specifically in relation to the World Intellectual Property Organization Performance and Phonograms Treaty.

1. **Process followed by the Committee on the Performers’ Protection Amendment Bill**

On 1 June 2021, the National Assembly adopted the Committee’s report in which the Committee outlined how it intended to correct any procedural defect (*Minutes of Proceedings, National Assembly*, 1 June 2021).

On 4 June 2021, the Committee placed adverts in national and regional newspapers inviting stakeholders and interested parties to submit written submissions with reference to the alignment of the Performers’ Protection Amendment Bill [B24B-2016] with the obligations set out in international treaties. The Committee received 91 submissions in this regard.

Furthermore, in preparation for the public hearings, the Committee held a workshop on 3 and 4 August 2021 to provide the new members of the Portfolio Committee on Trade and Industry with a conceptual framework of copyright and related rights. One of the focus areas was in respect of performers’ rights in respect of sound recordings and audiovisual works. The workshop also covered key theoretical concepts and practices in these areas, as well as the international framework for protecting copyright and related rights.

On 11 and 12 August 2021, the Committee held public hearings to consider the submissions received in relation to the Committee’s call in respect of the President’s reservations.

The submissions received from stakeholders on the President’s reservations were substantive in nature and raised a number of complex legal and policy matters for the Committee and the Department of Trade, Industry and Competition to consider. This required careful consideration given the international reach, and the impact on domestic constituencies, as well as to ensure that the process going forward was constitutionally sound.

In light of the above, the Minister of Trade, Industry and Competition submitted a letter requesting that the Department be afforded additional time to consider the complex legal and policy matters raised in the submissions in order to provide an informed response in line with the constitutional parameters of the process.

On 11 and 12 November 2021, the Committee received a response with regard to the oral and written submissions received in relation to the President’s reservations from the Department and Parliament’s Constitutional and Legal Services Office respectively.

On 19 November 2021, the Committee adopted its report seeking permission from the National Assembly in terms of Assembly Rule 286(4)(c) for it to amend other provisions of the Copyright Act. As certain clauses of the Performers’ Protection Amendment Bill [B24B-2016] are subject to the promulgation of the Copyright Amendment Bill [B13B-2017], the Committee agreed that it would consider both Bills simultaneously. Thus, the consideration of the Performers’ Protection Amendment Bill [B24B-2016] was subject to the conclusion of the process with respect to the Copyright Amendment Bill [B13B-2017].

On 1 December 2021, the National Assembly granted the Committee permission to inquire into amending other provisions of the Copyright Act (*Minutes of Proceedings, National Assembly*, 1 December 2021).

On 4 December 2021, the Committee placed adverts in national and regional newspapers inviting stakeholders and interested parties to submit written submissions on the additional proposed provisions to the Copyright Act. The Committee received 53 submissions in this regard.

On 6 May 2022, the Committee received a response with regard to these written submissions received from the Department and Parliament’s Constitutional and Legal Services Office respectively.

The Committee continued with its deliberations on 11, 17, 18 and 25 May 2022 considering the inputs and responses from the Department and Parliament’s Constitutional and Legal Services Office to the additional clauses advertised.

On 8 June 2022, the Committee formally considered the amendments to the Performers’ Protection Amendment Bill [B24B-2016], as a result of the President’s reservations. On a number of clauses, there had been no consensus reached. In this regard, the Democratic Alliance, the Freedom Front Plus and the African Christian Democratic Party objected to the amendment of the following clauses:

* Clause 2 – gender neutral drafting
* Clause 3 – remuneration in terms of performers in relation to audiovisual works and sound recordings, as well as gender neutral drafting
* Clause 4 – gender neutral drafting
* Clause 5 – gender neutral drafting
* Clause 6 – correcting a typographical error
* Clause 7 – removal of reference to the Electronic Communications and Transactions Act and gender neutral drafting

1. **Minority views were expressed on the following aspects contained in this report:**

* The Democratic Alliance expressed a concern that parties had not been given sufficient opportunity to make submissions with regard to the option available to Committee as expressed in Rule 203(3)(c) which would have allowed the Committee to recommend to the House that it should rescind its previous decision to pass the Bill, and reject the Bill. The Committee did consider a discussion on, and proposal to proceed under paragraph (c), as well as the proposal to proceed under paragraph (b), which allows for the Bill to be amended. The Committee voted to amend the Bill and not to reject it.
* The Freedom Front Plus was of the view that the Bill is fundamentally flawed and that a clause by clause consideration of amendments to address the President’s reservations would not enhance the Bill further. In light of the above, it had recommended that the Committee should have opted to apply Rule 203(3)(c) recommending to the House that it should rescind its previous decision to pass the Bill, and reject the Bill.
* The Freedom Front Plus disagreed with the Committee that the consultation periods had been sufficient, and was of the view that the periods, which they view as too short given the complex nature of the Bill, had inhibited members of the public to comment. It expressed a concern that the Bill may face a Constitutional Court challenge in this regard.
* The Economic Freedom Fighters also expressed concern at the process being limited by the Committee in terms of Joint Rule 203.
* The Economic Freedom Fighters was of the view that the Bill did not adequately address the plight of actors, as currently actors are not earning royalties. Furthermore, that this Bill did not correct the fact that actors are freelancers and not workers hence they are not protected by the Labour Relations Act, 1995 (Act No. 66 of 1995).

1. **Recommendation**

The Portfolio Committee on Trade and Industry recommends that the House adopts this report and approves the second reading of the Performers’ Protection Amendment Bill [B24C-2016].

The Democratic Alliance and Freedom Front Plus supported the report as an accurate reflection of the Committee’s proceedings on the Bill. However, they do not support the Bill.

The Economic Freedom Fighters abstained.

Report to be considered.