



Oral Submissions on the Copyright Amendment Bill and Performers' Protection Amendment Bill

Select Committee on Trade and Industry, Economic Development,
Small Business Development, Tourism, Employment and Labour

8 March 2023



Agenda

- 1 Primary Concerns with the CAB and PPAB
- 2 The Production Ecosystem
- 3 Impact of the CAB and PPAB on the Production Ecosystem
- 4 Recommendations



1

Primary
Concerns

Primary concerns with the Bills

There are four main aspects of the production industry that the Bills will severely impact if enacted.



Royalty sharing arrangements.



Ministerial Powers to prescribe mandatory terms and conditions.



Registration and reporting requirements in respect of certain acts.



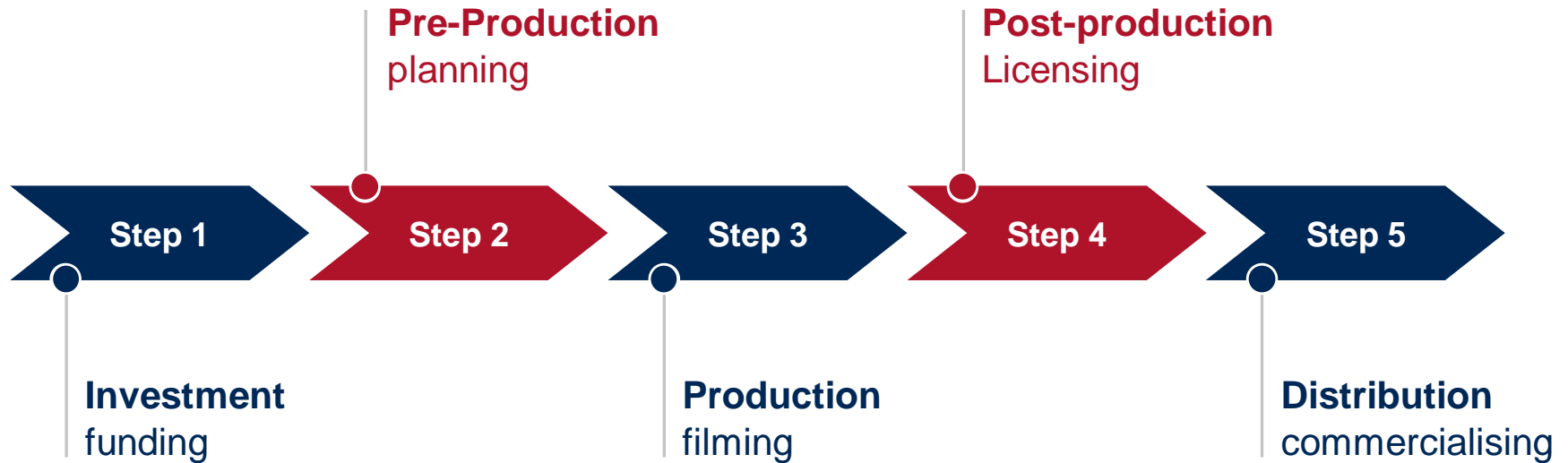
Reversion of assignment of rights after 25 years.



2

The
Production
Ecosystem

The Production Process



Commercial models for production investment

Films and TV series are expensive endeavors and require large amounts of funding.



Fully-funded investment



Pre-sales



Advertising through on-screen and off-screen advertising and product placements

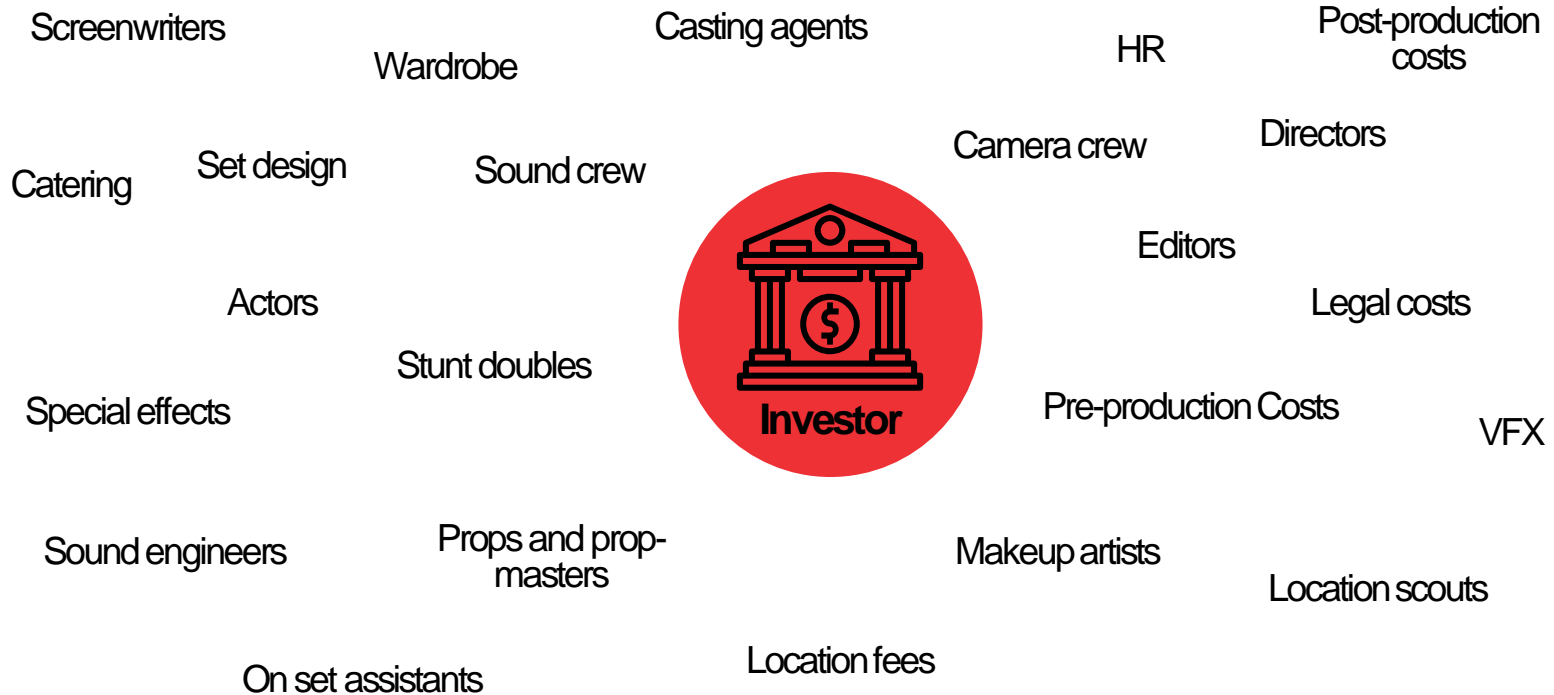


Co-investment

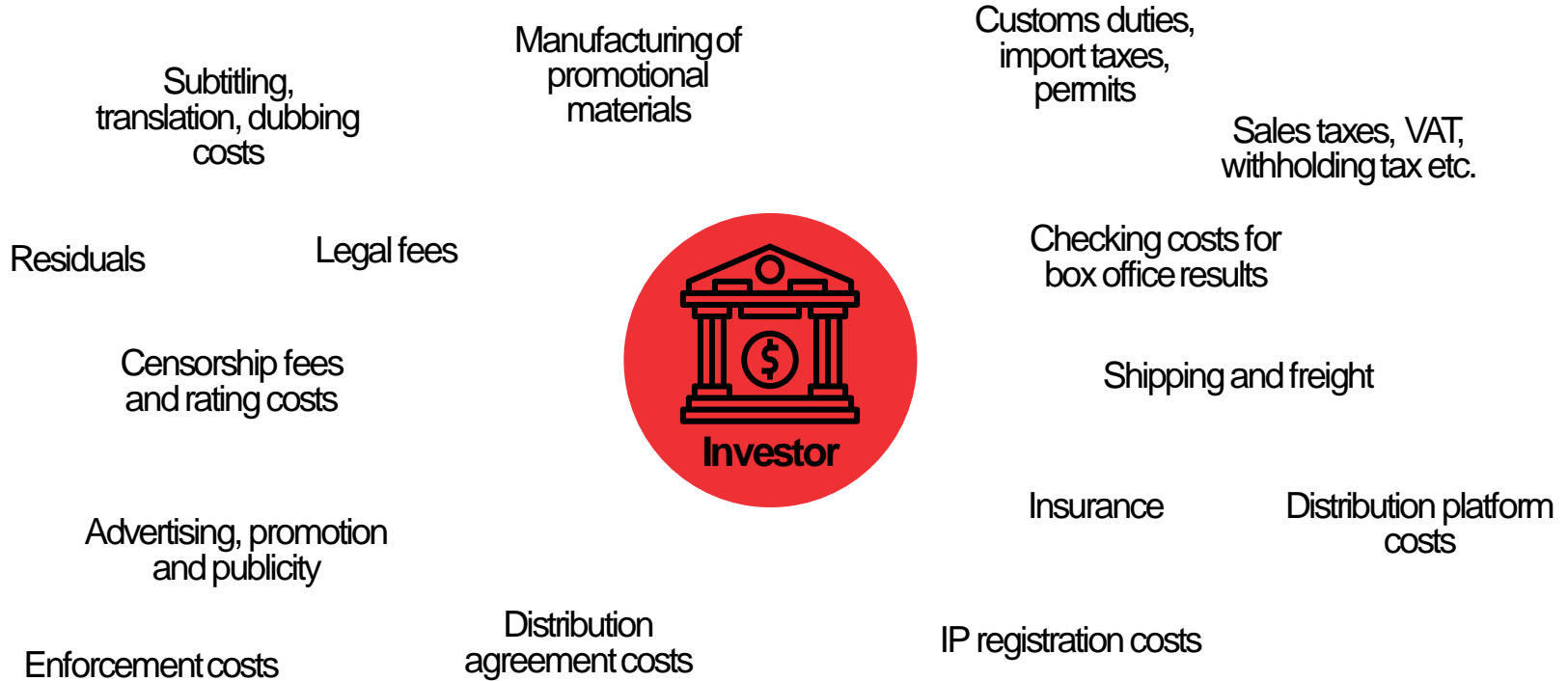


Revenue share

Production costs of a film or TV series



Distribution costs of a film or TV series



Gross profits of productions in the context of costs

Not all films and TV series are a success.

By introducing royalty sharing provisions based with reference to gross profit, the likelihood of recouping costs on a production are incredibly low.

As investors take all the risk in investing in a production, they must have an opportunity to recoup all their costs.

The royalty payments calculated with reference to gross profit preclude such recoupment entirely and will act as a disincentive investment

Films and TV series will not be attractive investments and will no longer be produced.





3

Impact of the
CAB and
PPAB on the
Production
Industry

Royalty sharing arrangements



Royalties are defined in terms of gross profit.



Many productions are not released, delayed in their release or are not commercially successful and either don't generate any profit or generate negligible profit.



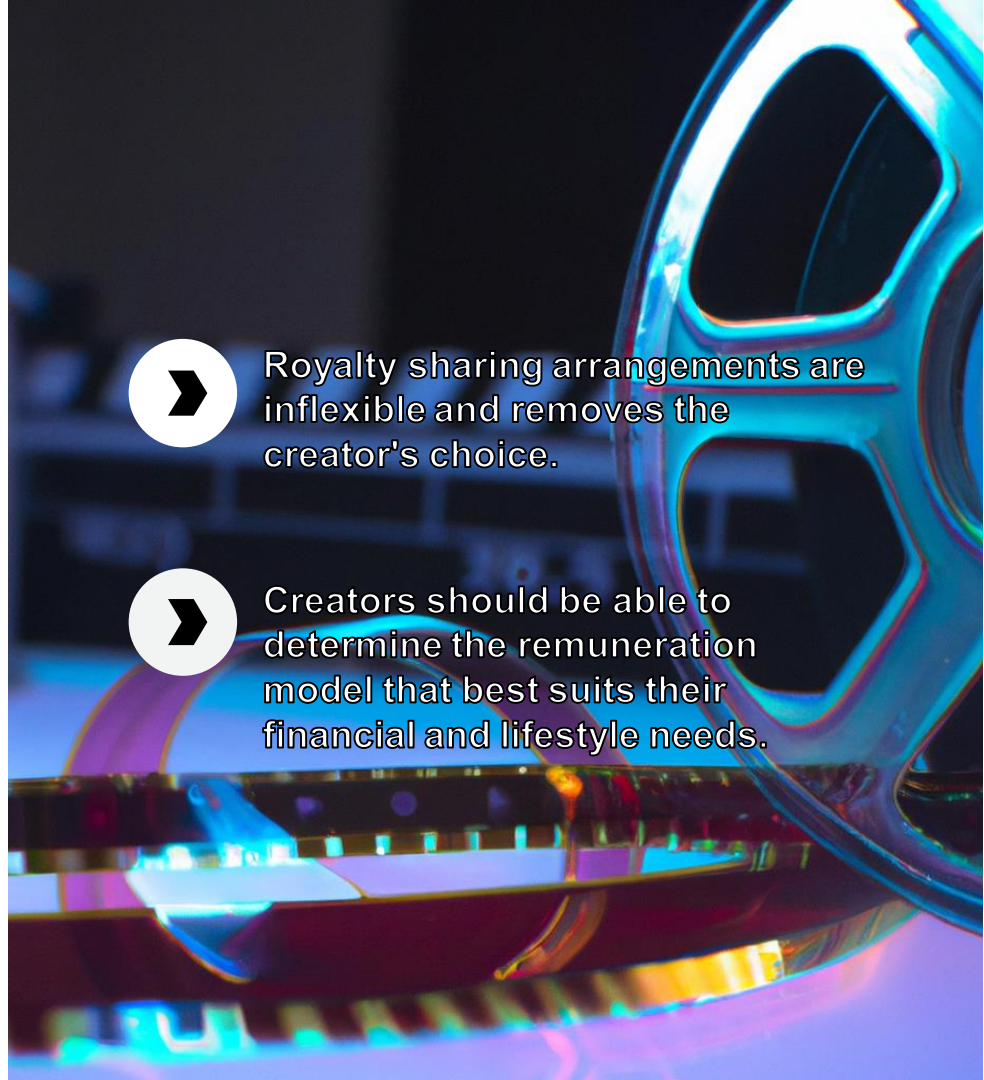
In these cases, creators will receive no or negligible remuneration.



Royalty sharing arrangements are inflexible and removes the creator's choice.



Creators should be able to determine the remuneration model that best suits their financial and lifestyle needs.



Ministerial powers to prescribe standard terms and conditions



Removes all contractual flexibility from the artist.



Forces a one-size-fits all approach to all forms of media.



Forces creators into royalty sharing agreements where they may wish to receive a lump sum.



Removes a creator's ability to rely a breach of contract to recover royalty payments.



No real ability to enforce rights.

Registration and reporting requirements for certain acts



Administratively burdensome and practically impossible to comply with for productions that make use of many different creators.



For instance, many productions will have crowds of extras. These provisions would require each of their performances to be registered and recorded



This requirement is out of step with international norms, where the monitoring of certain acts done in relation to copyrighted works is carried out by collecting societies and only in relation to musical works



Considering the difficulty of complying with these requirements, criminal sanctions are unduly severe.

Reversion of assignment of rights



Films and TV series are comprised of a multitude of copyrights that are bundled into one work.



A reversion of rights after 25 years would fragment the film or TV series back into this collection of rights, rendering the production commercially inert.



The work could no longer generate royalties, making royalty sharing arrangements pointless.

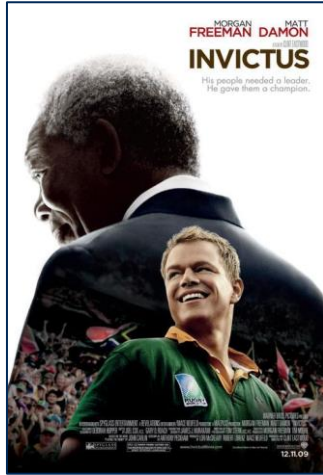


The reversion right would deter investors and production companies from working with South Africans or in South Africa.



This would have a disastrous effect on the South African production industry, domestically and internationally.

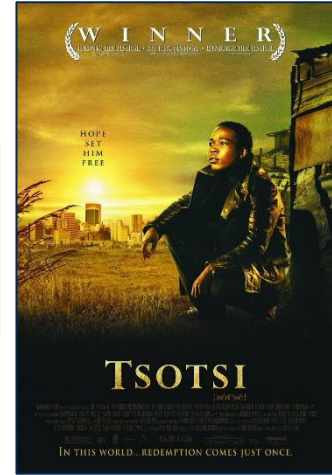
If the Bills were enacted



Invictus would never have been made



Charlize Theron would never have been hired



Stories like Tsotsi would never have been shared



4 Recommendations

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Questions



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