



# SAGA CAB & PPAB Submission

7 March 2023

Presented By  
**Jack Devnarain & Kelly Kropman**



SLIDE 1



**Jack Devnarain**  
SAGA Chairman

**SAGA**

**SOUTH AFRICAN  
GUILD OF ACTORS**



**Who are we?**

**The unified voice of  
professional actors  
in South Africa**





**Who are we?**  
The **unified voice** of  
**professional actors**  
in **South Africa**

• (119-128 NPO) 23 July 2009

• A member of the International Actors Federation (FIA)

• A member of the South African Screen Federation (SASFED)

• The Guild exists to promote professionalism in the film industry by protecting and enhancing actors' working conditions, compensation and benefits.



# Labour Relations

Negotiation

Worker Rights

Unions

Collective Bargaining

Employment  
Equity

Participation

National Minimum  
Wage





# Unregulated

Abuse

Manipulation

Threats

Unsafe

## Exploitation

Oppression

Coercion

## Imbalance of Bargaining Power

Bullying





## REGULATION

Confidence

Uniformity

Certainty

Predictability

Vision

Equity

Sustainability



SLIDE 8





WE HAVE A  
RIGHT  
TO EARN



Henry Cele  
1941 - 2007

**NO ROYALTIES**

**And  
so  
do  
they**



Menzi Ngubane  
1964 - 2021

**NO ROYALTIES**

**And  
so  
do  
they**



Mary Twala  
1939 - 2020

**NO ROYALTIES**

**And  
so  
do  
they**



Elize Cawood  
1952 - 2020

**NO ROYALTIES**

**And**

**so**

**do**

**they**



Lesego Motsepe  
1974 – 2014

**NO ROYALTIES**

And

so

do

they



Mandla Hlatshwayo  
1976 – 2017

**NO ROYALTIES**

And

so

do

they



Allen Booii  
1943 - 2020

**NO ROYALTIES**

And  
so  
do  
they





Afzal Khan  
1966 - 2021

**NO ROYALTIES**

**And**

**so**

**do**

**they**



Shaleen Surtie-Richards  
1955 – 2021

**NO ROYALTIES**

**And**

**so**

**do**

**they**



Sam Phillips  
1949 - 2021

**NO ROYALTIES**

**And**

**so**

**do**

**they**



Lindiwe Ndlovu  
1977 - 2021

**NO ROYALTIES**

**And**

**so**

**do**

**they**



SLIDE 21

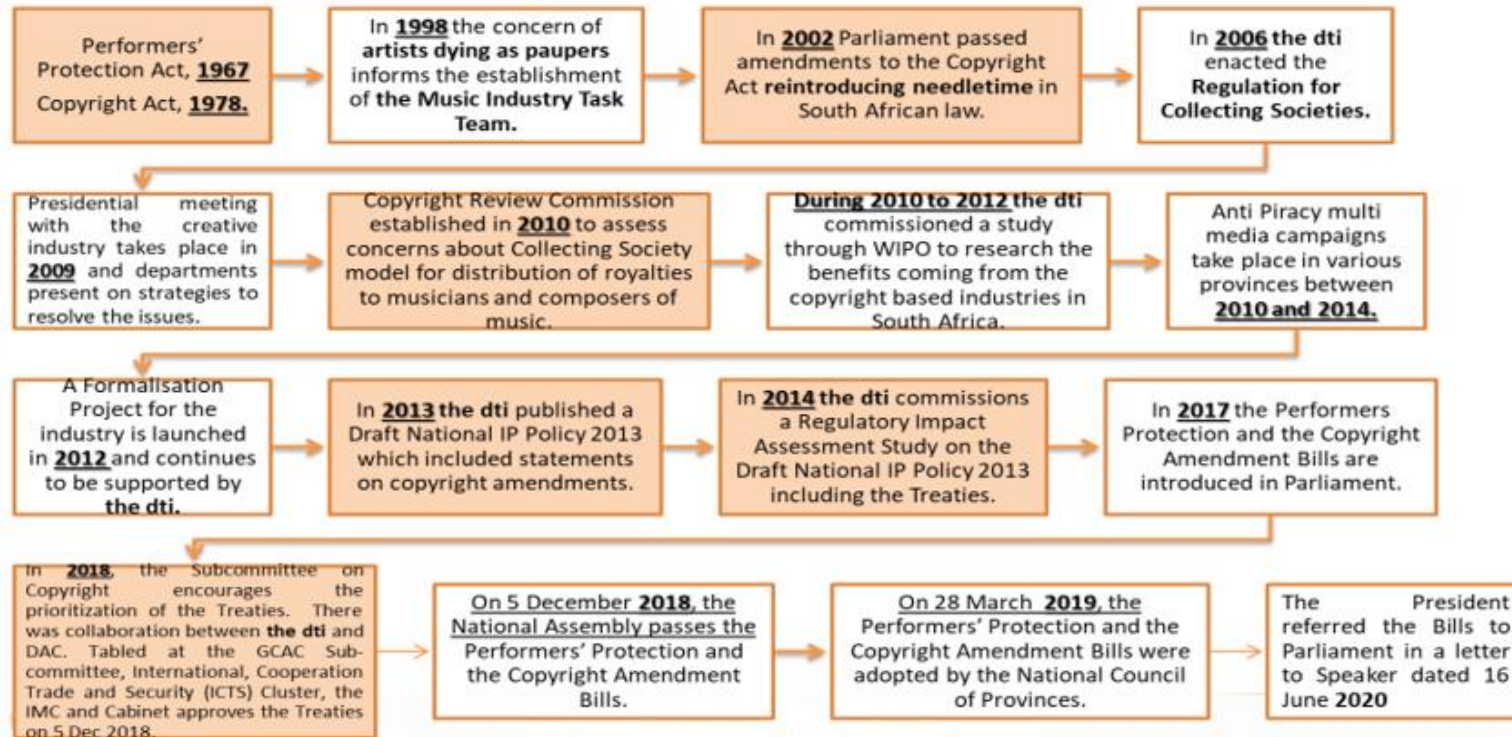


# The Performers' Protection Amendment Bill

and

# The Copyright Amendment Bill

Are intended to be read  
and interpreted  
together









## Terrorism Act, 1967



Parliament of South Africa

### Long title

Act to prohibit terroristic activities and to amend the law relating to criminal procedure; and to provide for other incidental matters.



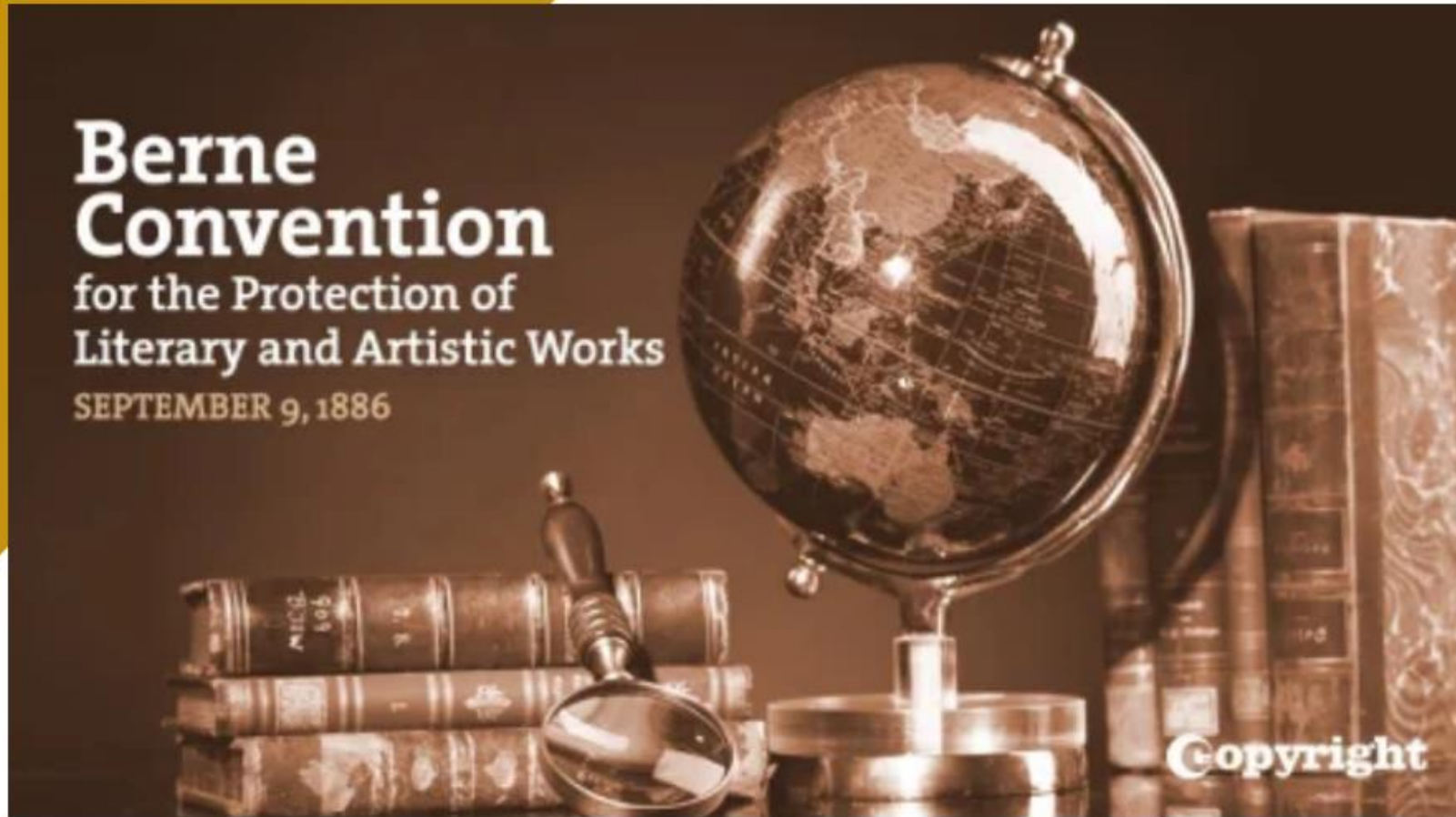






# Berne Convention

for the Protection of  
Literary and Artistic Works  
SEPTEMBER 9, 1886





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SLIDE 31



SLIDE 32





## The 4th Industrial Revolution is upon us

The 4th Industrial revolution is upon us and none more prevalent than within the audio-visual industry. Streaming content will soon surpass more traditional forms of entertainment and South African Actors are already losing their intellectual property rights to producers and commissioning services with no recourse.

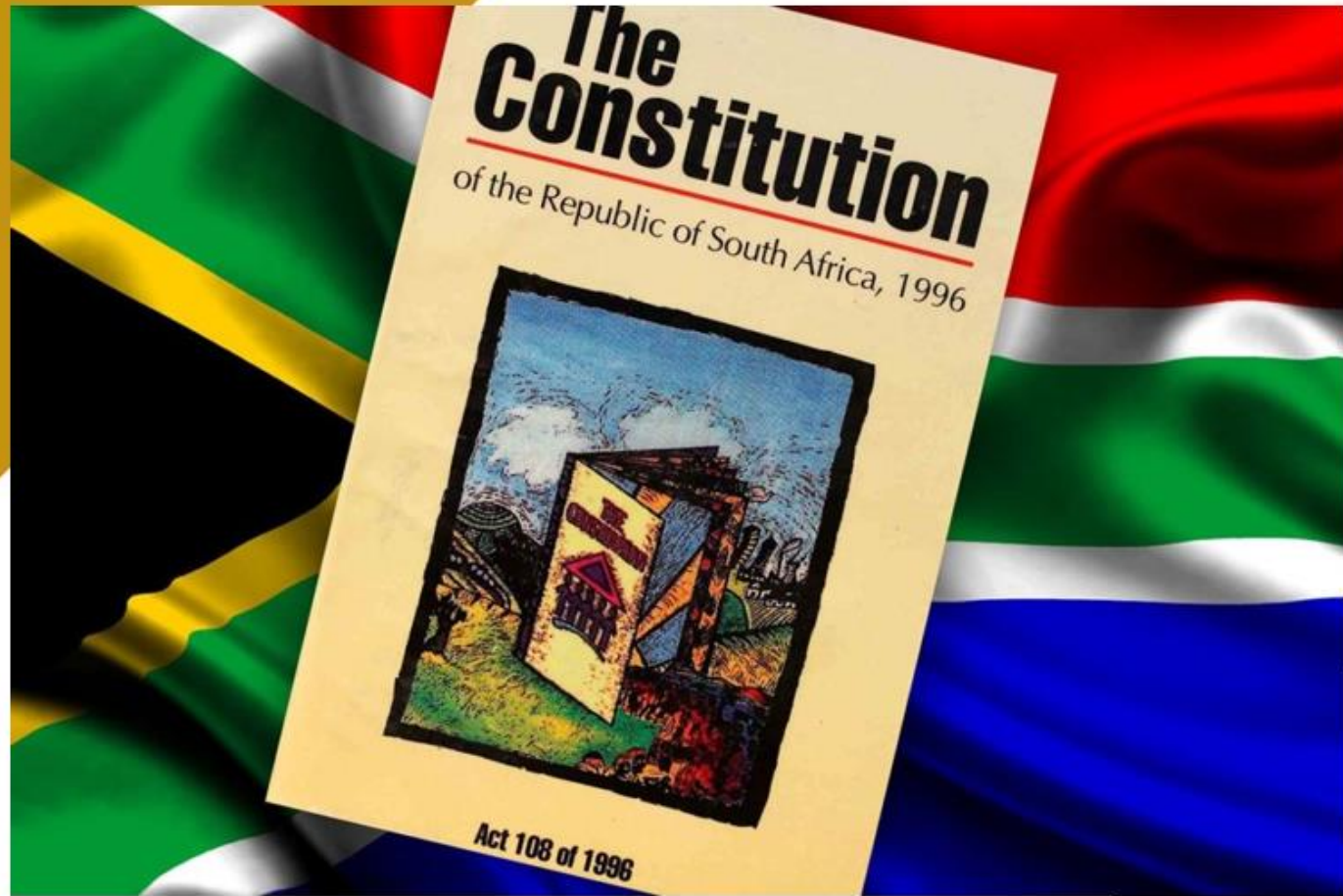


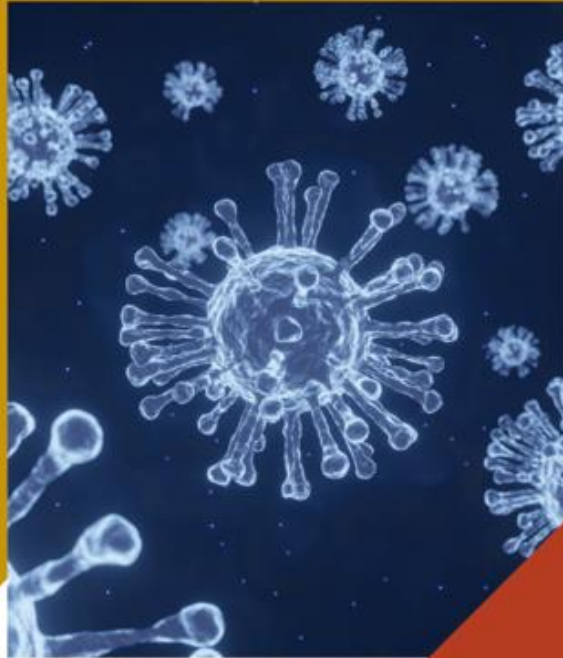
## Kelly Kropman

Kelly Kropman director of Kropman Attorneys  
Kelly holds a B.Ed (UJ) 2010, LLB (Wits) 2015  
and LLM (London) 2021.

Kelly has worked in the human rights and  
public interest law spaces since 2015. Kelly  
established Kropman Attorneys in 2017 as a  
firm specializing in constitutional law.







## The COVID-19 Lockdown and the Arts

What is absolutely apparent throughout the COVID-19 National State of Disaster Lockdown is how dependent we all are on art to keep us sane.

Almost everyone depended on television and streaming services through the lockdown for entertainment and a sense of the ordinary in an otherwise tumultuous time.

## The New Normal...









25 October 2022 Workshop on  
Performers' Protection  
Amendment Bill and Copyright  
Amendment Bill, with Deputy  
Minister





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A photograph showing two hands pulling a thick, braided rope. The hand on the left is wearing a dark suit jacket and a white shirt cuff. The hand on the right is bare. The rope is taut and runs horizontally across the center of the image. The background is plain white.

Bargaining

Power



## Labour relations

23. (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right—
  - (a) to form and join a trade union;
  - (b) to participate in the activities and programmes of a trade union; and
  - (c) to strike.
- (3) Every employer has the right—
  - (a) to form and join an employers' organisation; and
  - (b) to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right—
  - (a) to determine its own administration, programmes and activities;
  - (b) to organise; and
  - (c) to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).



## Labour relations

23. (1) Everyone has the right to fair labour practices.  
(2) Every worker has the right—  
(a) to form and join a trade union;

liberty monopolies doctrine to economy level exemptions  
**Competition**

exploitative case trade  
welfare exclusiveness raise dominant  
economic individual monopolists cartels consumer position  
innovation power enacted sector firm enacting restrictive  
acquisition company court share  
predatory practice regulators court guilds  
enforce common prohibited state enact dominance regional  
contrive plaintiffs provision

**law**

collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).



South Africa is a Signatory to:

The Berne Convention

WIPO Performances and Phonographs Treaty

Beijing Treaty on Audio visual Performances



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## Background Extras are NOT eligible for Performers' Royalties

“ **‘performer’** means an actor, singer, musician, dancer or other person who acts, sings, delivers, declaims, plays in, or otherwise performs literary works, musical works, artistic works, dramatic works, **[or works of joint authorship]** or traditional works as contemplated in the Copyright Act;”;





## Definitions (Article 2)

(a) Performers are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expression of folklore.

*“Agreed statement: It is understood that the definition of “performers” includes those who perform a literary or artistic work that is created or first fixed in the course of a performance.”*

- Improvisations included
- “extras” not included





It has been claimed that there's no option of a  
'buy-out'  
in lieu of Royalty



And that  
Royalties will be split with 'hundreds'  
Of background Extras



## Insertion of section 8A in Act 98 of 1978

9. The following section is hereby inserted in the principal Act after section 8:

### **“Share in royalties regarding audiovisual works**

**8A.** (1) A performer shall, subject to the Performers Protection Act, 1967 (Act No. 11 1967), have the right to share in the royalty received by the copyright owner for any of the acts contemplated in section 8.

(2) (a) The performer’s share of the royalty contemplated in subsection (1) shall be determined by a written agreement in the prescribed manner and form, between the performer and the copyright owner or between their respective collecting societies.

(b) Any assignment of the copyright in that work by the copyright owner, or subsequent copyright owners, is subject to the agreement between the performer and the copyright owner, contemplated in paragraph (a), or the order contemplated in subsection (3), as the case may be.



# BILL

To amend the Performers' Protection Act, 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; 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.



## Equitable Remuneration

is a term used in WIPO treaties to refer to the fair compensation that should be paid to rights owners for certain uses of their works. Actors generally have a bundle of exclusive rights that they can license to producers in exchange for equitable remuneration. These rights are individually quantifiable and negotiated accordingly:



## Equitable Remuneration

(4) A performer enjoys the following exclusive rights of authorising, as regards their performances:

(a) The broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance against payment of royalties or equitable remuneration:

(g) the broadcasting and communication to the public of their performances fixed in audiovisual fixations or sound recordings again

(3) The written agreement contemplated in subsection (2)—

(a) must at least contain the compulsory and standard contractual terms as may be prescribed;

(b) must set out the—

(i) royalties or equitable remuneration in respect of audiovisual works; and



The South African Guild of Actors  
Supports the Adoption of  
The Performers' Protection  
Amendment Bill  
and  
The Copyright Amendment Bill



HOWEVER





Section 8A(5)  
Should be Restored  
In the Interests of  
Transformation and  
Restorative Justice





## The Provision is Proactive

(5) (a) This section applies to an audiovisual work where copyright in that work was assigned before the commencement date of the Copyright Amendment Act, 2017, if that audiovisual work—

- (i) falls within the application of this Act; and
- (ii) is still exploited for profit.

Not Retroactive



In Conclusion



Thank you  
for  
Your Kind Attention