



**NORTH WEST PROVINCIAL LEGISLATURE**

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**PORTFOLIO COMMITTEE ON EDUCATION, ARTS, CULTURE, SPORTS AND RECREATION**

**Negotiating Mandate**

**To** : **Hon M.I Rayi**  
**Chairperson of Select Committee on Trade and Industry, Economic Development Small Business Development, Tourism, Employment and Labour**

**Name of Bill** : **Performers Protection Amendment Bill**

**Number of Bill** : **B 24 D-2016**

**Vote of The Legislature** : **The Portfolio on Committee on Education, Arts, Culture, Sports and Recreation votes in favour of Copyright Amendment Bill with Proposed Amendments**

Hon. P. Sebegoe

Chairperson: Portfolio Committee on Education, Arts, Culture,  
Sports and Recreation

15/05/2023

Date



## PROPOSED AMENDMENTS

1. Section 1: the definition of the word "**Performer**" – is quite narrow and may exclude certain types of performers who deserves protection under law. It is therefore proposed that the definition be broadened to ensure that all classification is covered.
2. *The definition of "**broadcast**", "**communication to the public**", "**fixation**", "**producers**", "**reproduction**" are not keeping with the corresponding definitions in the International Treaties, and the definition of "sound recording" should be amended to clarify that rights in pre-existing sound recordings are not affected by their inclusion into **audio-visual work***
3. Definition of "**technological protection measure**" and "**technological protection measure circumvention device**" are not compatible with Article 18 of the WPPT<sup>1</sup> and the exceptions in section 8E and 8F relating to prohibited conduct in respect to technological protection measures and exceptions in respect of technological protection measures are inadequately defined, therefore rendering them incompatible with the three-step test.
4. Section 3: Granting audio-visual performers additional rights even after the grant of exclusive rights is not a requirement under the Beijing Treaty<sup>2</sup> which South Africa intends to ratify.
5. Section 3 (1) of the Bill: the scope of protection for performers rights is not in line with the WPPT<sup>3</sup> which states that protection should be granted to recorded performances based on nationality, place of fixation or simultaneous publication criteria.
6. Section 3A(3)(a) and (b): Ministerial obligation to regulate contractual agreements between performers and producers and an unclear requirement for contract to set out "royalties or equitable remuneration in respect of audio-visual works; and equitable remuneration in respect of sound recordings, due and payable to the performer for any use of the fixation of the performance". This section is therefore recommended to be revised.

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<sup>1</sup> World Intellectual Property Organisation Performers and Phonograms Treaty

<sup>2</sup> Beijing Treaty on Audio-visual Performances of 2012

<sup>3</sup>Ibid



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7. Proposal that section 3A (3)(c) which provides for automatic reversion assigned after 25 years, be deleted. Section 3A (3)(c) limits the term of contract between performers and copyright owners of sound recordings including producers, songwriters, authors and publishers to a maximum term of 25 years, after which

rights will automatically revert to the respective parties. Reversion of assigned rights would also have the direct and severe negative impact on investments in South African artists and repertoire as sound recordings would cease to generate revenues for record companies and artists, reducing the revenues available to reinvest in new South African Artists.

8. Currently, performers and actors are treated freelancers, there is no protection under the Labour Act, Copyright Act or any related laws, and cannot earn royalties for their work.
9. Section 3B: It is assumed that the protection of sound recordings is already displayed in section 9 of the Copyright Act<sup>4</sup>, section 3B concerning the "protection of rights of producers of sound recordings" is misplaced and creates legal and commercial uncertainty.
10. Section 5: Downgrading of performer's rights from exclusive to mere remuneration rights which are less than the requirements of the WPPT and the Beijing Treaty<sup>5</sup> which South Africa intends to ratify.
11. Section 8D (3) impermissibly delegates plenary legislative power of the Minister, which stands to be set aside on this basis. The same section does not simply permit the Minister to make "Regulations" within the framework to all to guide the Minister's exercise of his powers under section 8D (3). There is no guidance in the bill as to what the rights and obligations should entail, or even the purposes they must serve. Instead section 8D purports to permit the Minister to determine the rights and obligations of persons who enter into agreements under the Act from scratch, as if the Minister is the legislative authority.

It is therefore recommended that section 8D (3) constitutes an impermissible delegation of legislative authority to the Minister, as such it would be invalid if enacted and should be deleted from the Bill.

12. *The Bill must also address the young artists who are talented but underage to enter into contractual obligations in a way that they will not be exploited within the industry.*

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<sup>4</sup> Copyright Act 98 of 1978 (as amended)

<sup>5</sup> Supra





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13. Fair remuneration: the bill must ensure that performers receives fair remuneration for them work. This could include provisions for royalties, minimum wage requirements and collective bargaining agreements.

14. Protection of Intellectual Property: Performers should have the right to protect their intellectual property, including their performances. The bill should include provisions for copyright protection and enforcement mechanisms.

15. Enforcement mechanism: The bill should provide effective enforcement mechanisms to ensure that performer's rights are protected. This could include the establishment of a regulatory body to oversee the industry and investigate complaints.

16. International harmonization: Given the global nature of the entertainment industry, the bill must harmonize with international standards and convention to ensure that South African performers are protected when working abroad and that foreign performers are protected when working in South Africa.

17. The Performers Protection Bill and Copyright Amendment Bill are interdependent, cannot be split to independent Bills, and to avoid confusion clear definitions should be included for "artists" and "performers" in both Bills.

Hon. P. Sebegoe

**Chairperson: Portfolio Committee On  
Education, Arts, Culture, Sports and Recreation**

18/05/2023  
Date