



ECONOMIC DEVELOPMENT AND TOURISM PORTFOLIO COMMITTEE REPORT ON THE COPYRIGHT AMENDMENT BILL [B 13D-2017] AND THE PERFORMERS' PROTECTION AMENDMENT BIL [B24D-2016] IN TERMS OF RULE 260 (2) (A), (B) & (C) OF THE STANDING RULES

INTRODUCTION

Honourable Chairperson, in terms of section 42(4) of the Constitution, the National Council of Provinces represents provinces to ensure that provincial interests are taken into account in the national sphere of government by participating in the national legislative process. The Copyright Amendment Bill [B 13D-2017] and the Performers' Protection Amendment Bill [B24D-2016], because of a section 79 (1) (constitution) referral from the President, the two Bills were tagged as Section 76 Bills in terms of the Constitution, were referred to the Economic Development and Tourism Portfolio Committee in terms of Rule 259(1). In turn, the KZN Legislature was, in terms of section 118 of the Constitution, compelled to facilitate the public involvement in the legislative process of the legislature and its Committees.

CONSULTATION PROCESS

On the 04th November 2022, the Portfolio Committee convened a special virtual meeting to have a briefing from the Department of Trade, Industry and Competition in terms of Rule 260 (1) of the Standing Rules. The Portfolio Committee resolved to cluster different districts together and hold five (5) public hearings in the following manner: Ugu and Harry Gwala districts (Gamalakhe Community Hall), EThekweni Metro, Ilembe and Umgungundlovu districts (Mkhumbane Hall), Zululand district (eDumbe Town Hall), King Cetshwayo and Umkhanyakude districts (uMhlathuze Auditorium), uThukela, Amajuba and uMzinyathi districts (Osizweni Community Hall). The public hearings were advertised from 1 January 2023 – 14 April 2023 on the KZN Legislature website and the following newspapers Isolezwe, Ilanga, The Mercury, Zululand



Observer, and Natal Witness. Eventually five (5) public hearings were held on the following dates and venues 15 March 2023 at Ugu district(Gamalakhe Community Hall), 31 March 2023 at EThekwini Municipality (Mkhumbane Hall),04 April 2023 at King Cetshwayo district (uMhlatuze Auditorium), 06 April 2023 at Zululand district(eDumbe Hall) and 11 April 2023 at Amajuba district (Osizweni Hall). The public hearings proceeded well and were satisfactory attended by the relevant stakeholders and members of the public in all the venues, except that in EThekwini Municipality at Mkhumbane Hall the public hearing was disrupted and could not proceed to take verbal comments from those who attended. The Stakeholders who were in attendance during the public hearing at Mkhumbane were requested to make a written submissions to the KZN Legislature before the 14th April 2023. When the Portfolio Committee engaged with stakeholders and members of the public during the public hearings in different districts, the Portfolio Committee made a call for written submissions to be submitted to the KZN Legislature before the 14th April 2023.

The report will attempt to provide an overview of submissions canvassed by interested stakeholders in relation to the two Bills during the public hearings.

The following submissions canvassed during the public hearings:

15 March 2023 Public Hearing Gamalakhe Community Hall

Thabo Makenete – Multichoice- Chairperson of the National Association of Broadcasters

He made the following verbal submissions:

The multichoice and Showmax support the Bills with the following proposed amendments.

The Bills must balance the rights between the owners, performers, producers, and investors. The consumers must be protected. The Bills must balance every value chain of the creative industry.



The issue of Royalties did not look at other sectors within the creative industry. The Royalties are paid when the work is successful. There must be an option of equitable remuneration.

Copyright bill seems to be a one size fit all and does not look at other sectors within the creative industry.

Copyright should look at the issue of piracy. There is no time to go to court and piracy must be resolved immediately when you see one.

The Minister should not be given powers to write contracts. Parties should have the freedom to negotiate their own agreements. The tribunal should deal with the issue of contracts.

Lindokuhle Hadebe

He made the following verbal submissions:

These laws do not serve the interest of the African people. The multichoice company serves the interest of the monopoly capital.

The state must play a critical role to ensure artists are protected. The state must protect the work of the artists.

We need to make laws which are influenced by BRICS alliance.

Sbonelo Nzimande

He made the following verbal submissions:

The two Bills must support the local artists and give them space.

The Bills must also promote and protect emerging artists and empower them.

There must be a minimum percentage of benefits between the writer, publisher, producer, and performer.



Adv. Nhlanhla Sibisi - CEO RISA

He made the following verbal submissions:

There are serious concerns regarding the fair use. There was no investigation and impact assessment study done to propose a fair use system in South Africa. There is no national government policy on the fair use system. South African legal system does not have the punitive measures like the legal system in USA.

In light of significant technological developments that have taken place, including in the field of artificial intelligence (AI) in recent months, the policymakers should undertake new, evidence-based impact assessments, reviewing the benefits and, moreover, risks of the proposals on fair use, to ensure that they are fit for purpose.

The problem with these two Bills is for one size fit all system in all the creative industry sectors.

The issue of giving the Minister powers to come with standard contractual terms must be review.

Jane Mhlaba – Artist

She verbally submitted as follows:

Backing vocalists are not protected by the laws. There is no rate for backing vocalists.

The churches are the greatest exploiters. The vocalists are not paid to perform in churches. The Bills must deal with exploitation of vocalists in churches.



04 April 2023 Public Hearing uMhlatuze Auditorium

Dr Motsepe – Head of Research Department SADTU

He made a verbal submission that SADTU fully support the Copyright Amendment Bill and Performers' Protection Amendment Bill. He further submitted that section 12A to 12D of the Copyright Amendment Bill strike a balance between the author and user.

Eugene Mthethwa - ARTIST

He made the following verbal contribution:

Post 1994 they were supposed to talk of the transformation within the creative industry. The multi nationals are going to earn more than the owner of the copyright. The intellectual property right is not introduced by the two bills. The Bills need to introduce the owner and the holder rights. For example He can have fair dealings with anyone who trades with his work.

The Bills are inconsistent with the ownership and holder. The Artists have no rights but the ownership rest with the recording companies. They are people who have signed lifetime contracts or Deeds of assignment.

The proposed period of 25 years for assignment of literary or musical work should be less than 10 years. The recording company should recoup within 10 years.

The Minister should be able to terminate the contract with the recording company. It is difficult to terminate the contract with the recording company.

The Minister's responsibility must be to nullify the contracts entered before 1994. They are artists who cannot record because they concluded a lifetime contracts.

The issue of fair use is ambiguous and should be rejected. How do artists fight against big companies such as Google and TIKTOK in court?



The artists have best interest of the creative industry against those big companies who have more money. Big companies such as Google are pushing for a fair use system which is rejected by many artists.

There must be an ad hoc Committee to deal with terms and conditions of the contracts.

Tzozo Zulu – Artist and Provincial Chairperson CCIFSA

He made a verbal submission that the fair use system is not wanted by the creative industry.

William Stainbery – Artist

He verbally submitted as follows:

The two Bills fail to recognize that in the creative industry they have 9 (nine) sectors.

The copyright Act, 1978 was using the system of fair dealing and would like to continue with this system of fair dealing.

On the issue of Royalties distribution, the collecting societies still have more powers than the artists who are owners of work.

The two Bills are too quiet on the issue of organized formation, and it need to be included on the Bills.

The guidelines for contracts should be created by the creative sector organized formation and not by the Minister.

The constitution of the Collecting Societies must be guided by the creative sector organized formation.



Nkosinathi Nzimande – Manager Artists eMhlatuze (Arts & Culture)

He verbally submitted as follows:

The Performers' Protection Amendment Bill does not cover all the sectors of the creative industry.

The specific details can be incorporated in the Regulations.

The laws should be prescriptive as to what is a lawful contract. Fore example the contract should also deal with the issue of beneficiaries if an artist passed away.

There must be equitable distribution of Royalties.

Karl Modise – presenter community radio

He made the following verbal submissions:

The Bills do not take into cognizance other platforms. Facebook and twitter were introduced in the country through other legislations.

The country legislates after the effects. The Act that regulates SAMRO it needs to be look at or reviewed because it was not cognizance of the current developments.

There must be correlation between theses Bills and other platforms. These Bills must talk about the non-payment of the community radios.

Vusimuzi Hlatshwayo - Artist

He verbally submitted as follows:

There must be a formal Structure of Artists similar like SAFA and PSL.



06 April 2023 Public Hearing eDumbe Town Hall

Romeo Qetsimani – Secretary General SAMIC (South African Music Industry Council)

He verbally submitted as follows:

When the Collecting societies collect money on behalf of the artists, the money does not end up in the hands of the artists.

The Copyright Amendment bill is only crediting the collecting societies. The copyright bill also exclude publishers and does not expose ownership of work.

These two legislations do not recognize the trade union formation or organized formation.

The Copyright Review Commission does not say anything about anti-piracy.

There must be private copy levies. The manufacturer must contribute copy levies to compensate the artists when their work has been stolen.

The copy levies contribution must be paid into the development fund. The Development Fund must be control by the creative industry sector and not the collecting societies.

He further proposed a blanket fee from the music which is played at Airports, Pubs and Retail stores. These fees must be given to the creative industry sectors structures (organized formation).

There must be a proposal in the form of a clause that members of the organized formations within the creative sectors must seat and be represented in the Boards.

There must be an Advisory body to advise the minister, CIPC and Copyright Tribunal.

The Copyright Tribunal should be amended to include not only judges but also people with knowledge, skills, experience and expertise within the creative industry sectors.

The Copyright bill is not clear and need to be expressive that people should not register as individual, but it must be organized formation.



Organized formation must be allowed to have a self-regulatory body to close the gap within the creative industry.

The contracts should not be determined by the minister, but it must be determined by the structures within the creative industry.

They need to have a provision to protect the artists rights which are still at school.

They need to introduce the Cultural, Creative Commission. They also need to introduce a Cultural and Creative strategy within the industry.

Sifiso Nala – Artist

He verbally submitted as follows:

Fair Deal

Working together is good when someone who is using my work has got my permission.

Fair Use

If the system of fair use is allowed to be implemented in South Africa that will mean artists will lose their rights.

They request an impact assessment study on the fair use system.

They proposed that the laws governing the Collecting Societies should be review.



11 April 2023 Public Hearing Osizweni Town Hall

Vusi Leeuw – President SAMIC (South African Music Industry Council)

He verbally submitted as follows:

They request that a Fair Use system should be rejected and taken out of these two Bills.

The issue of contracts can continue but it must be determined by the creative industry sectors.

Minenhle Gumbi – CCIFSA member, artist, actress, producer

She verbally submitted as follows:

Down with Fair Use down

If it generates income for you, it become unfair to her.

They want a fair dealing system.

They need a regulatory body within the Creative industry.

Sports discuss with stakeholders through federation. They also want organized structures within the creative industry.

Actors/Actress must get royalties if the series production continues to be play or broadcast.

The Royalties should also extend to the actors/actress when production continue to be broadcast.



Botsotso Mahlaba

He verbally submitted as follows:

There must be a legal programme regarding the Performers' Protection Amendment Bill.

They request legal assistance similar to the legal aid board to legally assist artists to protect their rights.

Thobile Xaba – Artist

She verbally submitted as follows:

If someone use her work, there must be a committee responsible to trace her work and must have an app to pay her. For example, 10%

There must be structures to protect artists work and be responsible for exposure.

Mbongisi Yesizwe – Insika yamaciko disability

He verbally submitted as follows:

They are requesting respect for all artists.

Government does not support and provide opportunities to artists who are living with disabilities.

They request government programs for artists who are living with disabilities.



We also received the following written submissions from different stakeholders. Interested parties that responded to the public consultation initiative included members of the public, individual and corporate creators, local, national, and international organizations, academics, and creative industry and professional associations. A total of 23 written submissions were received which are attached for ease of reference. The report is not accounting point by point the views advocated by interested parties through their written submissions. However, all the written submissions were duly considered.

The following is a list of all interested parties which submitted written submissions:

1. RISA/IFPI – RISA – representing the recording industry of South Africa,
IFPI – represents the recording industry worldwide.

Submit as follows:

The proposed introduction of an open-ended fair use exception into our copyright law framework should be reconsidered as it would risk creating a pathway for operators of Artificial Intelligence (AI) systems to exploit the work of artists, performers, creatives, and right holders without authorization, severely damaging the South African creative industries and investment in them.

In the last few months alone, the increasing capabilities of AI technologies have been firmly cast into the spotlight. From Chatbots able to answer complex questions (e.g. ChatGPT) to AI text-to-image generation software (e.g., DALLE-2, Midjourney, Stability AI, etc.), it is clear that the presence of AI in the creative sector is growing.

However, there is a significant risk that developers and operators of certain AI systems will seek to rely on ambiguous exceptions and limitations, such as in countries with open-ended fair use principles, to exploit the copyright-protected content of artists, performers, creatives, and right holders without seeking any



authorization for doing so by claiming that their activity is exempted from copyright protection.

Under the current copyright framework of fair dealing, the use of copyright - protected content in such a way would not be possible, as such acts would amount to clear acts of copyright infringement. However, the proposed introduction of an open-ended fair use provision in South Africa's copyright framework risks being broad enough to be interpreted as permitting the wholesale ingestion of copyright works and other protected subject matter by an AI system, including to generate new content.

2. SAGA – South African Guild of Actors.

Submit as follows:

Approving these bills will not only provide actors with the ability to meaningfully contribute to the economy but it will increase and strengthen this significant industry, cultivating prosperity in the creative economy, promoting tourism, and driving opportunities through education which stimulates employment.

The CAB and the PPAB represent monumental steps towards regulating the performance industry and attaining protection for performers in South Africa. The CAB and the PPAB are the vehicles by which the Legislature can provide the protection so desperately needed by performers. The CAB enables the establishment of performers' collecting societies to exercise this right on their behalf. In addition, the CAB will help create a balance in the power dynamic between actors and producers, who are commonly the sole owners of the copyright in such fixations.

SAGA welcomes the addition of the Bills into South African law. SAGA represents actors who historically have not been afforded the opportunity to enjoy the fruits of their labour.



3. Artists & Creatives for Fair Royalties and Fair Copyright.

Submit as follows:

They are a group of musicians, actors and creatives in South Africa, including well established veterans of the Performing Arts industry, creative leaders of the south African Youth, and new young voices from township, rural areas and communities across South Africa.

They believe that Artists who produce work must be able to make livelihood from their work and must be protected from unfair exploitation and theft.

They call for Urgent reform of the Copyright law in South Africa to replace the 1978 Act by means of the Copyright Amendment Bill. Keeping those clauses that ensure that future contracts guarantee fair royalties for musicians and performers. Keeping those clauses that ensure that future earnings on past contracts are shared with musicians and performers in the form of fair royalties. Keeping the Fair Use provisions in the law, so that communities can access arts & culture and educational materials.

4. ENdumeni Art Craft Tourism.

Submit as follows:

Abolish everything pertaining “Fair Use” and reinstate “Fair dealing”.

The Minister of Arts & Culture must put an advisory board which is constituted by registered federations with the sector. This board main duties are to advise the minister and protect the creative industry.



5. Recreate South Africa. (Biggest affiliates are SADTU, SAGA and Blind S. A.)

Submit as follows:

The Copyright Amendment Bill is progressive with many favourable limitations and exceptions that will enhance access to information and education, advance research and development, enable authors and creators to use and re-use other people's works fairly in order to recreate new works and inventions.

They support the provisions in Section 12A-D, Section 15(1)(a), Section 19B-D, Section 22A, Section 39B and others that will improve the lives of South Africans.

The Fair Use provisions in Section 12A are welcome. They will increase access to information and provide lawful flexibilities to use, re-use and make original and transformative works, and to exercise our freedom of expression and right to create. Fair use will help ensure that South Africa Copyright's law can adapt smoothly to future social, economic, and cultural conditions.

Fair Use and the various exceptions in the Bills will also enable South Africa to embrace Fourth Revolution (4IR) technologies, such as artificial intelligence (AI), machine learning, 3D printing and applications, robots, the Internet of things, genetic engineering, quantum computing and other technologies and advancements in the digital space.

Fair Use right will enable:

Adaptation to future developments without having to keep updating the copyright law; creation of accessible copies for people with disabilities; Reusing, re-mixing, transforming and re-interpreting; Research (academic and general) to be conducted, including through text and data mining, indexing, and searching.



6. Khula Arts Centre.

Submit as follows:

Copyright Amendment Bill does not regulate all cultural and creative industry value chain, for an example recording companies, publishers, promoters, actor's agencies and musician managers, therefore they submit that Performers Protection Amendment Bill to regulate the above stakeholders.

It is going to be very difficult to share royalties with extras, people who are contracted to appear once or twice in the film or song, hence they support once off payment.

They reject for collecting societies to keep money of the performers up to six years. The royalties must be distributed within six months and if it happens that collecting societies can't distribute one way or another the money must be kept in the cultural and creative industry Development Fund controlled by organized formation representing the performers. The copyright Amendment Bill must have a provision which establishes the Development Fund.

They don't want Fair Use in South Africa, and they want Fair deal. They are not aware who decided to take Fair deal out in the Copyright Act and was also in the recommendations made by the Copyright Review Commission. There was no social, economic impact study done by the Department of Trade, industry and competition on how Fair Use will impact on South Africa creatives.

The Copyright Amendment Bill must have a provision where there is a private copy levy, for all those equipment's, instruments which can downloads music, and pay such a levy in the Development Fund.



On the Tribunal they recommend that the cultural and creative industry experts like entertainment lawyers, copyright lawyers and industry experts to be included in the panel.

7. Qhawes Entertainment group.

Submit as follows:

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Performers Protection Amendment Bill gives powers to the minister who is not well informed about the cultural and creative industries to lead status and regulates contracts of different industries. They reject that and they call upon the amendment of this contract clause. They propose that contracts of different industries must be determined by different industry organizations as they are involved on daily basis of their respective industry/s different self-regulatory body/s which can develop standard contracts and be able to amend them from time to time and develop standards and code of conduct.

8. CCIFSA – Cultural & Creative Industries Federation of South Africa – Umkhanyakude District.

Submit as follows:

Copyright Amendment Bill does not regulate all cultural and creative industry value chain, for an example recording companies, publishers, promoters, actor's agencies and musician managers, therefore they submit that Performers Protection Amendment Bill to regulate the above stakeholders.

It is going to be very difficult to share royalties with extras, people who are contracted to appear once or twice in the film or song, hence they support once off payment.



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9. CCIFSA – Cultural & Creative Industries Federation of South Africa – King Cetshwayo District.

Submit as follows:

Copyright Amendment Bill does not regulate all cultural and creative industry value chain, for an example recording companies, publishers, promoters, actor’s agencies and musician managers, therefore they submit that Performers Protection Amendment Bill to regulate the above stakeholders.

It is going to be very difficult to share royalties with extras, people who are contracted to appear once or twice in the film or song, hence they support once off payment.

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10. CCIFSA – Cultural & Creative Industries Federation of South Africa – Amajuba District.

Submit as follows:

Copyright Amendment Bill does not regulate all cultural and creative industry value chain, for an example recording companies, publishers, promoters, actor's agencies and musician managers, therefore they submit that Performers Protection Amendment Bill to regulate the above stakeholders.

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The Copyright Amendment Bill must have a provision where there is a private copy levy, for all those equipment's, instruments which can downloads music, and pay such a levy in the Development Fund.

On the Tribunal they recommend that the cultural and creative industry experts like entertainment lawyers, copyright lawyers and industry experts to be included in the panel.

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11. CCIFSA – Cultural & Creative Industries Federation of South Africa – Ugu District.

Submit as follows:

Copyright Amendment Bill does not regulate all cultural and creative industry value chain, for an example recording companies, publishers, promoters, actor's agencies and musician managers, therefore they submit that Performers Protection Amendment Bill to regulate the above stakeholders.

It is going to be very difficult to share royalties with extras, people who are contracted to appear once or twice in the film or song, hence they support once off payment.

They reject for collecting societies to keep money of the performers up to six years. The royalties must be distributed within six months and if it happens that collecting societies can't distribute one way or another the money must be kept in the cultural and creative industry Development Fund controlled by organized formation representing the performers. The copyright Amendment Bill must have a provision which establishes the Development Fund.

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12. DALRO – Dramatic Artistic and Literary Rights Organization

Submit as follows:

Welcomes and supports the need for copyright reform, to improve conditions for authors and performers, and to bring South Africa’s copyright into the digital age.

Support copyright as a means to enable rightsholders, including authors, to negotiate with their rights to copyrights works, and DALRO support freedom to contract. It therefore object to Government - imposed contractual terms and royalty rates, as are intended to be introduced by the new Sections 6A, 7A, 39(cG) and (c), and the declaration as unenforceable of any contractual terms between willing parties by new Section 39B.

DALRO and visual artists support the introduction of the Resale Royalty Right in the Bill, it being a legitimate form of entitlement, supported by article 14ter of the Berne Convention, that will bring benefits to living artists and the heirs of deceased artists.



13. PASA – Publishers Association of South Africa.

Submit as follows:

The poorly drafted Copyright Amendment Bill is detrimental to authorship and publishing in South Africa and needs to be reconsidered. The few benefits introduced by the Bill are outweighed and undermined by a far greater quantity of provisions that allow more free uses of authors' works by others than does the current Copyright Act. Provisions that fail to support secure enforcement of authors' and publishers' rights likewise outweigh benefits.

The key concern for many in the intellectual property sector and cultural industry is that the 'hybrid fair use' provision and exceptions for educational purposes will turn copyright in South Africa on its head: A user can essentially access and re-use a work unless the copyright holder proves ex post facto that a use is unfair.

'Hybrid fair use' is a 180-degree reversal of exceptions in the current Copyright Act, which is more specific regarding 'fair dealing' and exceptions. The proposed provision has the potential to create an environment where copyright infringement and the use of copyright materials without compensation may increase in an industry that is already on the precipice due to unauthorized access. In higher education for example, the estimated number of copies sold as a percentage of enrolled students for whom the textbooks are prescribed is 30% with the rest being fulfilled mainly by piracy and illegal copying. This means that authors of academic texts are losing up to 70% of the royalties that should accrue to them.

There is a further concern that deep-pocketed big tech companies will use copyright content on their platforms to generate advertising revenue without compensation rightsholders, claiming to be covered by the presumed 'fair use' by their users. This could mean that the ultimate winners through the CAB are not local creators at all, but international tech companies.



The Regulations subsequent to Section 6A (inserted into the principal Act) will prescribe royalty rates as well as minimum terms of contracts. This development is bound to have a material impact on how publishing and production agreements are negotiated, and will likely impacting on contracts terms, like advances, that have up to now been commonplace.

14. M-net and Multichoice.

Proposed the following:

Retain current definition of “broadcast” in Copyright Act, 1978 and delete clause 1(d). Define the term “Commission” as meaning “the Commission established in terms of section 185 of the Companies Act”

Clause 25 in the Bill – Delete the proviso to section 22(3) so that it reads as follows: (3) No assignment of copyright and no exclusive licence to do an act which is subject to copyright in such work shall have effect unless it is in writing and signed by or on behalf of the assignor, the licensor or, in the case of an exclusive sub-licence, the sub-licensor, as stipulated in Schedule 2.

Clause 35(b) in the Bill – Delete the proposed sub-section (cG). Insert a new s29A(2)(g) that reads as follows: “(2) The tribunal may - ...

(g) set aside or vary a copyright assignment or copyright licence agreement, or a term of such an agreement, if that agreement or term is unfair, unreasonable, or unjust. A term will be unreasonable, unfair and/or unjust if-

(i) it is excessively one-sided in favour of any person, including the author of the which is the subject of the agreement;

(ii) the terms of the agreement are so adverse to one party (including the author) as to be inequitable; or



(iii) the agreement was subject to a term or condition, the fact, nature, and effect of which was not drawn to the attention of the party prejudiced thereby in a clear and satisfactory manner prior to entering into the agreement.”

Anti-piracy provisions: Action by owner of copyright for infringement – insert the following as a new s28U under the heading “Automated takedown by Internet Service Providers”

“An Internet Service Provider shall implement automated takedown forms that allow verified owners of copyright works the ability to remove infringing live streaming data immediately.”

15. Blind SA and Section 27.

Submit as follows:

In line with the Constitutional Court Judgment in Blind SA v Minister of Trade, Industry and Competition and Others, That:

The definition of ‘accessible format copy’ as in the Constitutional Court crafted remedy be adopted as it is in line with the Marrakesh VIP Treaty;

No change required to the definition of ‘persons with disabilities’ as the breadth of the definition fulfils South Africa’s Bill of Rights and International disability rights obligations;

The definition of ‘permitted entities’ as in the Constitutional Court crafted remedy be adopted in the definition of ‘authorised entities’



Minor amendments to be effected to s 19D(2)(a) and 19D(3) to ensure that these provisions do not unintentionally prevent the making and sharing of accessible format copies between Blind SA and the people whom they serve.

16. CAPASSO – The Composers Authors and Publishers Association NPC.

Submit as follows:

As a general note on the Bills relation to the international treaties, it is crucial to note that a fundamental tool employed by all international treaties in striking the necessary balance and protecting all necessary rights, is the 3 step test. The Bills perennially fails to highlight the need for all exceptions to be considered within the auspices of the 3 step test.

The definition of “royalty” to mean “gross profit made on the exploitation of a work” which is employed in section 6A of the Copyright Bill is highly prejudicial to the very people it seeks to protect. In as far as musical works are concerned, this definition has the potential to affect the royalty flow of authors and composers.

Orphan Works 22A – This section proposes to introduce provisions that relate to the licensing of orphan works. They therefore submit that the orphan works regime should not apply in respect of musical works.

The incorporation of a Fair Use exception alongside that of Fair Dealing raises fundamental problems as the two are jurisprudentially incompatible. Should the Committee be steadfast in the need to introduce the Fair Use doctrine into South African law, there would be even more of a need for the introduction of the Statutory Damages.



17. A blind organizational psychologist and Daisy SA and Shazacin Accessible Media.

Submit as follows:

he support Section 19D of the Bill but it will have to be amended in line with the Constitutional Court 's ruling and Section 28P needs to be deleted.

He also support the rest of the Bill, but particularly those in Section 12A (Fair Use) and the useful Sections 12B, C and D, and 19B and C. Section 39B unenforceable contracts) is welcome, as many contracts or licence agreements have unfairly overridden the rights of people with print disabilities. He also support provisions for authors and creators to have more control over their works and that collecting societies will be regulated so that authors and creators can receive fair remuneration for their works.

He also support the Performers' Protection Bill which will give performers the chance to earn royalties for the first time ever.

18. SADTU – South African Democratic Teachers' Union KwaZulu-Natal.

Submit as follows:

SADTU support the Copyright Amendment Bill especially the provisions for 'Fair Use' in section 12A, and the positive exceptions in sections 12B, 12C, 15(1), 19B,19C,19D,22A and 39B. These positive and practical exceptions will be most helpful to suburban, poor, and rural schools, as well as tertiary educational institutions, libraries and other information services, and people with disabilities in the KwaZulu-Natal.

The Copyright Amendment Bill provides authors with more control over their works, better contractual options with publishers, a reversion of copyright



assignment after 25 years, which is re-negotiable, or the authors can exploit their works in new ways to gain the best benefits for themselves.

Regulatory provisions for collection societies will force these entities to be more accountable and transparent and, in the process, to pay authors fairer royalties.

19. Apricity Consulting.

Submit as follows:

Section 12 A, B, C, D – Fair Use provisions and all exceptions for research, education and libraries, as a fundamental right. Authors and creators will certainly benefit from fair use to create new works;

Section 12B(1)(vii) – The removal of the words “official archive” allow broadcast archives to preserve live performances in the interest of our heritage;

Section 19B – Exceptions for computer programs, enabling interoperability especially which will be very helpful;

Section 19C – Exceptions for libraries, archives, museums and galleries. The exceptions to enable these entities to digitize its collections for the purpose of safeguarding their heritage are long overdue;

Section 19D – Exceptions for people with disabilities are crucial to enable fair access in alternative formats.

20. SAMIC – South African Music Industry Council.

Submit as follows:

SAMIC is of the view that both the Copyright Bill and the Performers’ Protection Bill are not aligned with South Africa’s international treaty obligations.



The introduction of extensive exceptions to authors' rights presents a very real and existential threat to the music industry as a whole. The new exceptions go far beyond the balance of securing a public good in the face of new technological developments. Rather, the new exceptions make nearly all exclusive rights granted by the Act ambiguous. This lacuna will merely create space for large corporations to exploit works without payment of a royalty to the detriment of the creators and controllers of such works.

Section 12A introduces fair use as a general exception. Fair use is an Anglo-American legal concept that stands in stark contrast to the list of exceptions currently included in the Act. What the Bill is asking of musicians and creatives is to do the job of legislating what amounts to fair use through litigation. Not only is this contrary to South Africa's international law obligations, but this is manifestly prejudicial to South Africa's creatives. SAMIC submits that the general fair use provision should not be included in the Bill in any form.

**21. ACA & CPA – ACA -Association For Communication & Advertising.
CPA – Commercial Producers Association.**

submit as follows:

A material procedural oversight during the development of the Copyright Amendment Bill is the absence of a meaningful economic impact assessment that should have informed the drafting of the Bill.

The Copyright Amendment Bill proposes an unwaivable 25-year limitation on all assignments of rights in literary and musical works that would pose great challenges to a producer's ability to secure rights clearances and consolidate all rights in an audiovisual work.

The proposed changes will likely result in legal uncertainty on key issues relating to the commissioning of works that do not currently exist in the Copyright Act, and they submit that these proposed changes should be rejected by the NCOP.



They submit that the NCOP should reject Sections 6A – 8A of the Copyright Amendment Bill.

22. Scholarly Horizons – Denise R. Nicholson t/a Scholarly Horizons

submit as follows:

The current Performers’ Protection Act, 1967 is even more outdated than the Copyright Act, 1978. It deprives performers of economic rights, i.e. the benefit of earning royalties, and does not afford them full protection of their moral rights, e.g. in audiovisual fixations.

Performers in South Africa, including KwaZulu-Natal, have no economic rights, nor do they have protection under the Labour Relations Act, or any other legislation that protects workers.

He support both the Performers’ Protection Amendment Bill and Copyright Amendment Bill.

23. S.S.C.I – Shadow Sthunzi Community Initiatives NPO.

Submit as follows:

Copyright Amendment Bill does not regulate all cultural and creative industry value chain, for an example recording companies, publishers, promoters, actor’s agencies and musician managers, therefore they submit that Performers Protection Amendment Bill to regulate the above stakeholders.

It is going to be very difficult to share royalties with extras, people who are contracted to appear once or twice in the film or song, hence they support once off payment.

They reject for collecting societies to keep money of the performers up to six years. The royalties must be distributed within six months and if it happens that



collecting societies can't distribute one way or another the money must be kept in the cultural and creative industry Development Fund controlled by organized formation representing the performers. The copyright Amendment Bill must have a provision which establishes the Development Fund.

They don't want Fair Use in South Africa, and they want Fair deal. They are not aware who decided to take Fair deal out in the Copyright Act and was also in the recommendations made by the Copyright Review Commission. There was no social, economic impact study done by the Department of Trade, industry and competition on how Fair Use will impact on South Africa creatives.

The Copyright Amendment Bill must have a provision where there is a private copy levy, for all those equipment's, instruments which can downloads music, and pay such a levy in the Development Fund.

On the Tribunal they recommend that the cultural and creative industry experts like entertainment lawyers, copyright lawyers and industry experts to be included in the panel.

Performers Protection Amendment Bill gives powers to the minister who is not well informed about the cultural and creative industries to lead status and regulates contracts of different industries. They reject that and they call upon the amendment of this contract clause. They propose that contracts of different industries must be determined by different industry organizations as they are involved on daily basis of their respective industry/s different self-regulatory body/s which can develop standard contracts and be able to amend them from time to time and develop standards and code of conduct.



It is clear from the written submissions that there are opposing views on the policy that should inform the Bills. The Bills before the Committee proposes a hybrid approach in that it makes provision for specific exceptions and then provides a general fair use exception that will cover instances not specifically foreseen. When considering the varying perspectives, the Committee must keep various constitutional rights in mind, as well as matters related to equity and efficiency policy considerations. It is necessary that the Bills provide a balance in order to respond to constitutional concerns, and the economic, finance, and social policy outcomes.

Support and promotion of innovation, research and development, transformative goals, encouraging investment and propelling inclusive growth, remain critical policy priorities.

Some organizations who made written submissions on the Bills strongly raised a concern about a lack of a socio-economic impact assessment in respect of the two Bills. It is argued by some of the stakeholders that empirical evidence on the costs and benefits of the Bills is needed to establish the net benefits of the proposed Copyright and Performers' Protection rights reforms.

This report attempts to cover the issues raised in the written submissions under broad topics or policy themes.

Definitions

In relation to the definition "authorized entity", some of the stakeholders advised that the finding of the Constitutional Court in relation to 19D of the Copyright Act in *Blind SA v Minister of Trade, Industry and Competition & Others* should be considered.

Fair Use and Fair Dealing

Some organizations who made written submissions have strongly rejected the replacement of the 'fair dealing' system by the introduction of the 'fair use' system in the South African Copyright law. They advanced that the 'fair use' approach has been rejected in UK, Australia, New Zealand, and the European Union. Some went further by pointing out that the introduction of 'fair use' is strongly supported by certain big technology corporations such as Google, which



will be the immediate principal beneficiaries, at the cost of the livelihoods of South African authors and copyright owners. For instance, the Writers Guild of South Africa, argue that there exists an overwhelming reality that the envisaged Act on copyright falls short in protecting the authors (and other creators) and owners of copyright works.

Exceptions and Limitations

Translation

Some of the interested parties argue for the **rejection of Section 12B** introduced by the envisaged Copyright Amendment Bill. It is advocated that the provisions amount to an arbitrary deprivation of property as contemplated in section 25 (1) of the Constitution. The deprivation is substantial and overly broad.

Personal use and adaptation of formats for personal use

The advocates of fair dealing further argue that the scope of the personal use provisions in **section 12B(h)** is too wide and there is a missed opportunity to introduce private copying remuneration for authors.

Reproduction for educational and academic activities

From the public interest perspective, it is advanced by some stakeholders that although the proposed amendment arguably limits authors' rights in relation to their work, these changes give effect to numerous constitutional rights, including the right to education. It is further submitted that **section 12D (1) widens the ambit of the provision and promotes the right of access to information.**



Persons with a disability

All the interested parties support and promote provisions that will provide exceptions for people with disabilities. The interested parties argue that the move would allow people with disabilities to have fair access in alternative formats.

Orphan Works

It is advanced by other interested parties that the **new Section 22A of the Act as introduced by Clause 26 and the definition of “orphan works” by Clause 1(i) of the Copyright Bill** should be rejected.

Composers Authors and Publishers Association submitted that the orphan works regime should not apply in respect of musical works.

Absence of effective legal remedies to combat online copyright infringement

Some of the stakeholders advanced that the Copyright Amendment Bill does not have effective remedies that would help right holders to combat piracy and other infringement in the online environment.