

ANNEXURE A: DRAFTING PROPOSALS

Copyright Bill

M-Net and MultiChoice submit that the Copyright Bill is so fundamentally flawed that it cannot be taken forward in its current form and should be referred back to the Department to be completely reworked. Failing this, we set out below a summary of the drafting proposals made in our main submission above on the Copyright Amendment Bill.

Clause in Bill	Section in Act	Topic	Provision in the Copyright Bill	M-Net and MultiChoice's proposal
1(d)	1	Definition of "broadcast"	<p>(d) by the substitution for the definition of "broadcast" of the following definition:</p> <p>"'broadcast' means—</p> <p>(a) transmission, partially or wholly, by wire or wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof;</p> <p>(b) transmission, partially or wholly, by satellite; or</p> <p>(c) transmission, partially or wholly, of encrypted signals if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;"</p>	<p>Retain current definition of "broadcast" in Copyright Act, 1978 and delete clause 1(d).</p> <p>(The current definition of "broadcast" in the Copyright Act is as follows:</p> <p>"broadcast," when used as a noun, means a telecommunication service of transmissions consisting of sounds, images, signs, or signals which -</p> <p>(a) takes place by means of electromagnetic waves of frequencies of lower than 3 000 GHz transmitted in space without an artificial conductor; and</p> <p>(b) is intended for reception by the public or sections of the public,</p> <p>and includes the emitting of programme-carrying signals to a satellite, and, when used as a verb, shall be construed accordingly;"</p>
	1	Definition of "Commission"	n/a	Define the term "Commission" as meaning "the Commission established in terms of section 185 of the Companies Act"

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5	6A	Share in royalties regarding literary or musical works	<p>The following section is hereby inserted in the principal Act after section 6:</p> <p>“Share in royalties regarding literary or musical works</p> <p>6A. (1) For the purposes of this section, ‘royalty’ means the gross profit made on the exploitation of a literary work or musical work by a copyright owner or a person who has been authorized by the author to do any of the acts contemplated in section 6.</p> <p>(2) Notwithstanding—</p> <p>(a) the assignment of copyright in a literary or musical work; or</p> <p>(b) the authorization by the author of a literary or musical work of the right to do any of the acts contemplated in section 6, the author shall, subject to any agreement to the contrary, be entitled to receive a fair share of the royalty received for the execution of any of the acts contemplated in section 6.</p> <p>(3) (a) The author’s share of the royalty contemplated in subsection (2) shall be determined by a written agreement in the prescribed manner and form, between the author and the copyright owner, or between the author and the person contemplated in subsection (2)(b), or between their respective collecting societies.</p> <p>(b) Any assignment of the copyright in that work, by the copyright owner, or subsequent copyright owners, is subject to the agreement between the author and the copyright owner, contemplated in paragraph (a), or the order contemplated in subsection (4).</p> <p>(4) Where the author and copyright owner, or the person contemplated in subsection (2)(b), cannot agree on the author’s share of the royalty, either party may refer the</p>	<p>Amend s6A to read as follows:</p> <p>"Share in royalties regarding literary or musical works"</p> <p>(1) For the purposes of this section, ‘royalty’ means the gross profit made on the exploitation of a literary work or musical work by a copyright owner or a person who has been authorized by the author to do any of the acts contemplated in section 6.</p> <p>(2) Notwithstanding—</p> <p>(a) the assignment of copyright in a literary or musical work; or</p> <p>(b) the authorization by the author of a literary or musical work of the right to do any of the acts contemplated in section 6, the author shall, subject to any agreement to the contrary, be entitled to receive equitable remuneration or a fair share of the royalty received for the authorisation of any of the acts contemplated in section 6.</p> <p>(3) (a) The author’s equitable remuneration or share of the royalty contemplated in subsection (2) shall be determined by a written agreement between the author and the copyright owner, or between the author and the person contemplated in subsection (2)(b), or between their respective collecting societies.</p> <p>(b) Any assignment of the copyright in that work, by the copyright owner, or subsequent copyright owners, is subject to the agreement between the author and the copyright owner, contemplated in paragraph (a), or the order contemplated in subsection (4).</p>

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			<p>matter to the Tribunal for an order determining the author's share of the royalty.</p> <p>(5) The agreement contemplated in subsection (3)(a) must include the following:</p> <ul style="list-style-type: none"> (a) The rights and obligations of the author and the copyright owner or the person authorized by the author to use the work as contemplated in subsection (2)(b); (b) the author's share of the royalty agreed on, or ordered by the Tribunal, as the case may be; (c) the method and period within which the amount must be paid to the author by the copyright owner, or the person authorized to use the work as contemplated in subsection (2)(b), to the author; and (d) a dispute resolution mechanism. <p>(6) This section does not apply to—</p> <ul style="list-style-type: none"> (a) a copyright owner who is the author of the literary or musical work in question; (b) a work created in the course of employment contemplated in section 21(1)(b) or (d); or (c) a work where copyright is conferred by section 5 in the state, or a prescribed local or international organization.”. 	<p>(4) Where the author and copyright owner, is authorising rights in terms of section 6 but no agreement has been reached or the person contemplated in subsection (2)(b), cannot agree on the author's equitable remuneration or share of the royalty, then the author or the copyright owner or either party may refer the matter to the Tribunal for an order determining the author's equitable remuneration or share of the royalty. In determining the equitable remuneration or share of royalty, the Tribunal shall be guided by –</p> <ul style="list-style-type: none"> (a) the nature of the work; (b) the nature and extent of the author's contribution to the work; (c) the author's experience, expertise, and qualifications; (d) the terms and conditions of the agreement concluded by the parties, if any; (e) whether the work was made in pursuance of a commission by any person for money or money's worth; (f) the nature, extent and amount of consideration received by the author in money or money's worth for the creation of the work, including skills and training, enterprise development and other benefits; (g) the nature of the market for the work; (h) the commercial success of the work, including the demand and need for the work and its potential for future commercialisation;

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				<p>(i) the copyright owner's role in creation, funding, marketing, and promoting the work;</p> <p>(j) general business and economic conditions and/or prevailing market conditions in the relevant sector;</p> <p>(k) the need to incentivise the creation of works, promote investment and stimulate employment in the creative industries; and</p> <p>(l) other relevant considerations.</p> <p>(5) The agreement contemplated in subsection (3)(a) must include the following:</p> <p>(a) The rights and obligations of the author and the copyright owner or the person authorized by the author to use the work as contemplated in subsection (2)(b);</p> <p>(b) the author's equitable remuneration or share of the royalty agreed on, or ordered by the Tribunal, as the case may be;</p> <p>(c) the method and period within which the amount must be paid to the author by the copyright owner, or the person authorized to use the work as contemplated in subsection (2)(b), to the author; and</p> <p>(d) a dispute resolution mechanism. ...'</p>
9	8A	Share in royalties regarding audiovisual works	<p>The following section is hereby inserted in the principal Act after section 8:</p> <p>"Share in royalties regarding audiovisual works</p> <p>8A. (1) A performer shall, subject to the Performers Protection Act, 1967 (Act No. 11 1967), have the right to</p>	Delete s8A, as the Performers Protection Bill is the appropriate statutory instrument to deal with performers rights and the inclusion of performers protection provisions in the Copyright Act gives rise to duplication, inconsistency and confusion.

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			<p>share in the royalty received by the copyright owner for any of the acts contemplated in section 8.</p> <p>(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.</p> <p>(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.</p> <p>(3) Where the performer and copyright owner contemplated in subsection (2)(a) cannot agree on the performer's share of the royalty, the performer or copyright owner may refer the matter to the Tribunal for an order determining the performer's share of the royalty.</p> <p>(4) The agreement contemplated in subsection (2)(a) must include the following:</p> <p>(a) The rights and obligations of the performer and the copyright owner;</p> <p>(b) the performer's share of the royalty agreed on, or ordered by the Tribunal, as the case may be;</p> <p>(c) the method and period within which the amount must be paid by the copyright owner to the performer; and</p> <p>(d) a dispute resolution mechanism.</p> <p>(5) Any person who executes an act contemplated in section 8 for commercial purposes must—</p>	<p>Alternatively, if s8A is retained in the Copyright Bill, amend it to:</p> <ul style="list-style-type: none"> • Provide for a royalty or equitable remuneration; • Delete the registration requirement; • Delete any references to the "prescribed manner and form"; and • List the factors which should guide the Tribunal in determining equitable remuneration, which should include <ul style="list-style-type: none"> a) the nature of the work; b) the nature and extent of the author's contribution to the work; c) the author's experience, expertise and qualifications; d) the terms and conditions of the agreement concluded by the parties, if any; e) whether the work was made in pursuance of a commission by any person for money or money's worth; f) the nature, extent and amount of consideration received by the author in money or money's worth for the creation of the work, including skills and training, enterprise development and other benefits; g) the nature of the market for the work; h) the commercial success of the work, including the demand and need for the

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			<p>(a) register that act in the prescribed manner and form; and</p> <p>(b) submit a complete, true and accurate report to the performer, copyright owner, the indigenous community or collecting society, as the case may be, in the prescribed manner for purposes that include the calculation of royalties due and payable by that person.</p> <p>(6) (a) Any person who intentionally fails to register an act as contemplated in subsection (5)(a), or who intentionally fails to submit a report as contemplated in subsection (5)(b), shall be guilty of an offence.</p> <p>(b) A person convicted of an offence under paragraph (a) shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, or if the convicted person is not a natural person, to a fine of a minimum of ten per cent of its annual turnover.</p> <p>(c) For the purpose of paragraph (b), the annual turnover of a convicted person that is not a natural person at the time the fine is assessed, is the total income of that person during the financial year during which the offence or the majority of offences were committed, and if that financial year has not yet been completed, the financial year immediately preceding the offence or the majority of offences, under all transactions to which this Act applies.</p> <p>(d) If the court is satisfied that substantial and compelling circumstances exist, which justify the imposition of a lesser sentence than the minimum sentence prescribed in paragraph (b), it shall enter</p>	<p>work and its potential for future commercialisation;</p> <p>i) the copyright owner's role in creation, funding, marketing, and promoting the work;</p> <p>j) general business and economic conditions and/or prevailing market conditions in the relevant sector;</p> <p>k) the need to incentivise the creation of works, promote investment and stimulate employment in the creative industries; and</p> <p>l) other relevant considerations</p>

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			those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.”	
24(a)	21(1)(c)	Ownership of copyright commissioned works	<p>Section 21 of the principal Act is hereby amended—</p> <p>(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:</p> <p>“(c) Where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of an audiovisual work or the making of a sound recording and pays or agrees to pay for it in money or money’s worth, and the work is made in pursuance of that commission, the ownership of any copyright subsisting in the work shall, subject to subsection (3), be governed by written agreement between the parties.”;</p>	<p>Delete clause 24(a) and revert to the current default position and wording in s21(1)(c) of the Copyright Act, 1978, which reads as follows:</p> <p>(c) Where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of an audiovisual work or the making of a sound recording and pays or agrees to pay for it in money or money’s worth, and the work is made in pursuance of that commission, such person shall, subject to the provisions of paragraph (b), be the owner of any copyright subsisting therein by virtue of section 3 or 4.</p>
24(c)	21(3)	Limitation of ownership of copyright commissioned works	<p>“(c) by the addition after subsection (2) of the following subsection:</p> <p>“(3) (a) The agreement contemplated in subsection (1)(c) may limit the ownership of copyright in the relevant work so that the exclusive right to do or to authorize any of the acts contemplated in sections 7, 8 or 9, as may be applicable, is limited to one or more of such acts, necessary for the purpose of that commission.</p> <p>(b) Where the agreement contemplated in subsection (1)(c) does not specify who the copyright owner is, limited ownership of the copyright shall vest in the person commissioning the work, so that the exclusive right to do or to authorize any of the acts contemplated in sections 7, 8 or 9, as may be applicable, is limited to such rights as may be necessary for the purpose of the commission.</p>	<p>Amend s21(3) to read as follows:</p> <p>“(3) (a) Any agreement reached between the copyright owner and the author may limit the ownership of copyright in the relevant work so that the exclusive right to do or to authorise any of the acts contemplated in sections 7, 8 or 9, as may be applicable, is limited to one or more of such acts, necessary for the purpose of that commission.</p> <p>(b) Where an agreement between the copyright owner and author does not specify who the copyright owner is, ownership of the copyright shall vest in the person commissioning the work, so that the exclusive right to do or to authorise any of the acts contemplated in sections 7, 8 or 9, as may be applicable, shall vest in the person commissioning the work, unless limited to such</p>

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			<p>(c) The author of a work contemplated in subsection (1)(c) may approach the Tribunal for an order—</p> <p>(i) where the work is not used by the person who commissioned the work for the purpose commissioned, licensing the author to use that work for such purpose, subject to a fee determined by the Tribunal payable to the person who commissioned the work; or</p> <p>(ii) where the work is used for a purpose other than that for which it was commissioned, ordering the person who commissioned the work to make payment of royalties to the author for such other use.</p> <p>(d) When considering a licence contemplated in paragraph (c)(i), the Tribunal must take all relevant factors into account, including the following:</p> <p>(i) The nature of the work;</p> <p>(ii) the reason why, and period for which, the person who commissioned the work did not use the work; and</p> <p>(iii) public interest.</p> <p>(e) Where the work contemplated in subsection (1)(c) is of a personal nature to the person who commissioned the work, the Tribunal may not licence the author to use that work.”.”</p>	<p>rights as may be necessary for the purpose of the commission.</p> <p>(c) The author of a work contemplated in subsection (1)(c) may, after a period of seven years from the date of the commission, approach the Tribunal for an order—</p> <p>(i) where the work is not used by the copyright owner for the purpose of executing any of the acts contemplated in sections 7, 8 or 9, as may be applicable and the copyright owner has, upon request, refused to license the author to use that work to execute any such acts, licensing the author to use that work for such purpose, subject to a fee determined by the Tribunal payable to the copyright owner; or</p> <p>(ii) where the work is used for the purposes of an act contemplated in sections 7, 8 or 9, as may be applicable, in respect of which the author is the owner of the rights, ordering the copyright owner to make payment of equitable remuneration or royalties to the author for such other use.</p> <p>(d) When considering a licence contemplated in paragraph (c)(i), the Tribunal must take all relevant factors into account, including the following:</p> <p>(i) The nature of the work;</p> <p>(ii) the reason why, and period for which, the copyright owner did not use the work;</p> <p>(iii) the public interest in the exploitation of the work;</p>

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				<p>(iv) the purpose for which the work was commissioned; and</p> <p>(v) the consideration received by the author for the commissioned work.</p> <p>(e) Where the work contemplated in subsection (1)(c) is of a personal nature to the copyright owner, the Tribunal may not licence the author to use that work.</p> <p>(f) Any order granted by the Tribunal in terms of subsection (3)(c) shall not be in conflict with a normal exploitation of the work or be unreasonably prejudicial to the legitimate interests of the owner of the copyright."</p>
25	22(3)	Duration of assignment of copyright	(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 exclusive sub-licensor, as stipulated in Schedule 2: Provided that assignment of copyright in a literary or musical work shall only be valid for a period of up to 25 years from the date of such assignment.	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 exclusive sub-licensor, as stipulated in Schedule 2.
31	28P	Exceptions in respect of technological protection measures	The following section is hereby inserted in the principal Act after section 28N: ... Exceptions in respect of technological protection measures 28P. (1) Nothing in this Act shall prevent any person from using a technological protection measure circumvention device or service to perform any of the following:	Amend s28P to read as follows: Exceptions in respect of technological protection measures 28P. (1) Nothing in this Act shall prevent an authorised State investigative, protective or intelligence agency using a technological protection measure circumvention device for law enforcement purposes in accordance with applicable laws.

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			<p>(a) An act permitted in terms of any exception provided for in, or prescribed under, this Act; or</p> <p>(b) the sale, offer to sell, procurement for use, design, adaptation for use, distribution or possession of any device or data, including a computer program or a component, which is designed primarily to overcome security measures for the protection of data in order to enable the performance of any act permitted in terms of paragraph (a).</p> <p>(2) A person who wishes to circumvent a technological protection measure so as to perform a permitted act contemplated in subsection (1) but cannot practically do so because of such technological protection measure, may—</p> <p>(a) apply to the copyright owner for assistance to enable such person to circumvent such technological protection measure in order to perform such permitted act; or</p> <p>(b) if the copyright owner has refused such person's request or has failed to respond to it within a reasonable time, engage the services of any other person for assistance to enable such person to circumvent such technological protection measure in order to perform such permitted act..."</p>	<p>(2) Save for those persons authorised in subsection (1), any person who wishes to use a technological protection measure circumvention device must obtain the written consent of the owner of the technologically protected work in respect of which the device is proposed to be used before doing so. Should the owner refuse, unreasonably, to grant consent to the use of the device in the manner aforesaid, that person may apply to court for an order that he or she be permitted to use the device in relation to the technologically protected work and the court may, if it is satisfied that the device is intended to be used so as to enable the person to perform an act in relation to the technologically protected work which is permitted in terms of this Act, grant such an order on such reasonable conditions as it deems fit; Provided that the technological protection measure circumvention device or system may only be authorised to be used-</p> <p>(i) for law enforcement purposes by an authorised government investigative, protective or intelligence agency in accordance with applicable laws;</p> <p>(ii) where the owner of the technological protection measure has consented to that use;</p> <p>(iii) where ordered by a court or the Tribunal after the owner has refused access;</p> <p>(iv) by a person authorised by government in terms of s19D for the benefit of persons with disabilities; and</p>

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				(v) by a person authorised by government in terms of s19C for libraries, archives, museums and galleries."
31	28Q	Enforcement by Commission	<p>The following section is hereby inserted in the principal Act after section 28N:</p> <p>...</p> <p>"Enforcement by Commission</p> <p>28Q. The Commission must enforce this Act by—</p> <p>(a) performing all the relevant functions contemplated in section 187 of the Companies Act in respect of this Act;</p> <p>(b) referring matters to and appearing before the Tribunal; and</p> <p>(c) dealing with any other matter referred to it by any person, the Tribunal or any other regulatory authority..."</p>	Delete s28Q.
33	29H(c)	Orders of Tribunal	<p>The following sections are hereby inserted in the principal Act after section 29:</p> <p>"...</p> <p>Orders of Tribunal</p> <p>29H. In addition to the powers in terms of this Act and the Companies Act, the Tribunal may make any appropriate order in relation to a matter brought before it, including - ...</p> <p>(c) imposing an administrative fine in terms of section 175 of the Companies Act, with or without the addition of any other order in terms of this Act;... "</p>	Delete s29H(c).

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35(b)	39(cG)	Ministerial power to prescribe compulsory and standard contractual terms	"Section 39 of the principal Act is hereby amended ... (b) by the insertion of the following paragraphs after paragraph (cE): ... (cG) prescribing compulsory and standard contractual terms to be included in agreements to be entered in terms of this Act;"	Delete 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 work 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."
35(b)	39(cl)	Ministerial power to prescribe royalty rates or tariffs	"Section 39 of the principal Act is hereby amended ... (b) by the insertion of the following paragraphs after paragraph (cE): ... (cl) prescribing royalty rates or tariffs for various forms of use;"	Delete proposed sub-section (cl). Insert a new s29A(2)(g) as set out in the row above.
35(c)	39(3)	Regulations	"Section 39 of the principal Act is hereby amended ... (c) by the addition of the following subsections, the existing section becoming subsection (1): ...	Amend s39(3) to read as follows: "(3) Before making any regulations in terms of subsection (1) or (2), the Minister must publish the

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			(3) Before making any regulations in terms of subsection (1) or (2), the Minister must publish the proposed regulations for public comment for a period of not less than 30 days."	proposed regulations for public comment for a period of not less than 60 days."
36	s39B	Unenforceable contract terms	<p>The following section is hereby inserted in the principal Act after section 39A:</p> <p>"Unenforceable contractual term</p> <p>39B. (1) To the extent that a term of a contract purports to prevent or restrict the doing of any act which by virtue of this Act would not infringe copyright or which purport to renounce a right or protection afforded by this Act, such term shall be unenforceable.</p> <p>(2) This section does not prohibit or otherwise interfere with open licences or voluntary dedications of a work to the public domain."</p>	<p>Delete proposed s39B and replace it with a new s29A(2)(h) which reads as follows:</p> <p>"29A(2) The Tribunal may - ...</p> <p>(h) declare unenforceable a term of a contract which unfairly prevents or restricts the doing of any act which by virtue of this Act would not infringe copyright or which serves to renounce a right or protection afforded by this Act in circumstances where the party that enjoys the protection has not been adequately compensated for the benefit to the other contracting party of that renunciation."</p>
40	N/A	Short title and commencement	<p>"Short title and commencement</p> <p>40. (1) This Act is called the Copyright Amendment Act, 2017, and comes into operation on a date fixed by the President by proclamation in the Gazette."</p>	<p>Amend clause 40 as follows:</p> <p>"Short title and commencement</p> <p>40. (1) This Act is called the Copyright Amendment Act, 2023, and comes into operation on a date fixed by the President by proclamation in the Gazette, which date shall be not less than 24 months after the date on which the President assented to the Act."</p>
N/A	N/A	Anti-piracy provisions: Automated takedown by ISPs	N/A	<p>Insert the following as a new s28U under the heading "Automated takedown by Internet Service Providers"</p> <p>"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."</p>

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N/A	24	Anti-piracy provisions: Action by owner of copyright for infringement	N/A	<p>Insert the following as a new s24(1D) under the heading "Action by owner of copyright for infringement":</p> <p>"(1D) Without derogating from the generality of subsection (1), the High Court may, upon application by a copyright owner who has reasonable grounds to believe that their copyright is or may be infringed by a person situated in or outside the Republic of South Africa, grant an order which it deems appropriate including the following relief–</p> <ul style="list-style-type: none"> (a) a person enabling or facilitating the infringement of copyright, or whose service is used by another person to infringe copyright, to cease such enabling or facilitating activity or disable that person's access to its service for the infringing purpose; (b) a person hosting or making available an online location, service or facility situated in or outside the Republic of South Africa which is used to infringe copyright or which enables or facilitates the infringement of copyright, to disable access to such online location, service or facility as replaced, amended or moved from time to time; and/or (c) an internet service provider to prevent or impede the use of its service to access an online location, service or facility situated in or outside the Republic of South Africa that is used to infringe copyright as replaced, amended or moved from time to time."

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				<p>Insert the following associated definitions in s1:</p> <p>"'Internet Service Provider' means any person providing information system services."</p> <p>"'Information System Services' includes the provision of connections, the operation of facilities for information systems, the provision of access to information systems, the transmission or routing of data messages between or among points specified by a user and the processing and storage of data, at the individual request of the recipient of the service"</p>
N/A	27	Penalties and proceedings in respect of dealings which infringe copyright	N/A	<p>Insert the following as a new s27(4A):</p> <p>(4A) Any person who-</p> <p>(a) distributes, sells, offers to sell, makes, causes to be made, or has in his or her possession, any machine, equipment or contrivance; or</p> <p>(b) creates, causes to be created, distributes, sells, offers to sell or has in his possession any software, shall be guilty of an offence.</p> <p>Insert the following as a new s27(4B):</p> <p>(4B) Any person who, without the consent of the owner, distributes in public for commercial purposes, by way of rental, lease, hire, loan or similar arrangement or who makes available for download from, or viewing from, a website or other publicly accessible electronic storage medium copies of a work in which copyright subsists shall be guilty of an offence.</p>

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				<p>Insert the following as a new s27(4C):</p> <p>(4C) Any person who, without the authority of the owner of the copyright-</p> <p>(a) distributes an infringing work for any purpose to such an extent that the owner of the copyright in that work is prejudicially affected, or</p> <p>(b) stores more than five different infringing works on an electronic storage device; shall be guilty of an offence."</p>

PPA Bill

Clause in Bill	Section in Act	Topic	Provision in the PPA Bill	M-Net and MultiChoice's proposal
1(b)	1	Definition of "broadcast"	<p>(b) by the substitution for the definition of "broadcast" of the following definition:</p> <p>""broadcast' means—</p> <p>(a) transmission, partially or wholly, by wire or wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof;</p> <p>(b) transmission, partially or wholly, by satellite; or</p> <p>(c) transmission, partially or wholly, of encrypted signals if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;"</p>	<p>Replace proposed definition of "broadcast" with current definition of "broadcast" in the Copyright Act, 1978. Namely,</p> <p>"broadcast," when used as a noun, means a telecommunication service of transmissions consisting of sounds, images, signs, or signals which -</p> <p>(a) takes place by means of electromagnetic waves of frequencies of lower than 3 000 GHz transmitted in space without an artificial conductor; and</p> <p>(b) is intended for reception by the public or sections of the public,</p>

				and includes the emitting of programme-carrying signals to a satellite, and, when used as a verb, shall be construed accordingly;"
1(h)	1	Definition of "performer"	(h) by the substitution for the definition of "performer" of the following definition: "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 traditional works as contemplated in the Copyright Act;"	Amend the definition of "performer" to read as follows: "performer' means an actor, singer, musician, dancer or other person who acts, sings, delivers, declaims, plays in or otherwise viewed in context, performs literary, musical or artistic works as contemplated in the Copyright Act, but does not include extras, ancillary participants or incidental participants"
1(j)	1	Definition of "producer"	(j) by the insertion after the definition of "prescribe" of the following definition: "producer' means the person who takes the initiative and has the responsibility for the first fixation of a sound recording or an audiovisual fixation"	Amend the definition of "producer" to read as follows: "producer means the person who takes responsibility for the first fixation of a sound recording or an audiovisual fixation"
1(e), and (l)	1	Definitions of "copyright management information", "technologically protected work", "technological protection measure" and "technological protection measure circumvention device"	The PPA Bill defines these terms with reference to the definition of those terms in the Copyright Act. i.e. "copyright management information' has the meaning assigned to it in the Copyright Act;" "technologically protected work' has the meaning assigned to it in the Copyright Act;" "technological protection measure' has the meaning assigned to it in the Copyright Act;" "technological protection measure circumvention device' has the meaning assigned to it in the Copyright Act;"	We propose that clause 1(e) and (l) be amended to repeat the corresponding definitions in the Copyright Act instead of the respective clauses cross referring to the definitions in the Copyright Act. i.e. Each term should be defined in the PPA Bill itself.
4(c)	5(1A)(a) and (c)	Registration requirements	(c) by the insertion in subsection (1) after paragraph (b) of the following subsections: "(1A) A person who for commercial purposes intends to— (a) broadcast or communicate to the public an unfixed performance of a performer or copies of that	Amend s5(1A) (a) and (c) to read as follows: "A person who for commercial purposes intends to - (a) broadcast or communicate to the public an unfixed performance of a performer or

			<p>performance fixed in an audiovisual fixation or sound recording; ...</p> <p>(c) make a reproduction of a fixation of a performance of a performer or copies of that performance fixed in an audiovisual fixation or sound recording;...</p> <p>must register that act in the prescribed manner and form and submit a complete, true and accurate report to the performer, producer, copyright owner, the indigenous community or collecting society, as the case may be, in the prescribed manner, for the purpose of, amongst others, calculating the royalties or equitable remuneration due and payable by that person"</p>	<p>copies of that performance fixed in an audiovisual fixation or sound recording; ...</p> <p>(c) make a reproduction of a fixation of a performance of a performer or copies of that performance fixed in an audiovisual fixation or sound recording;...</p> <p>must prepare and submit a complete true and accurate annual report of such usage and must make the relevant parts of such report available to the performer, producer, copyright owner, the indigenous community or collecting society as the case may be, within a reasonable time after having received a request for such."</p>
4(c)	5(1B)(a)	Penalties for non-compliance with registration requirements	<p>(c) by the insertion in subsection (1) after paragraph (b) of the following subsections:</p> <p>"(1B) (a) Any person who intentionally fails to register an act or who intentionally fails to submit a report as contemplated in subsection (1A), shall be guilty of an offence...."</p>	<p>Amend s5(1B)(a) to read as follows:</p> <p>"(1B) Any person who intentionally fails to submit a report as contemplated in subsection (1A) without good cause shown, shall be liable to pay a fine not exceeding R100,000 to be determined by the Copyright Tribunal."</p> <p>Delete s5(1B) (b), (c), and (d).</p>
4(g)	5(5)	Avoidance of double payment to a performer for the same act	<p>(g) by the substitution for subsection (5) of the following subsection:</p> <p>"(5) Any payment made in terms of subsection (4) shall be deemed to have discharged any obligation by the person who broadcasts or transmits, sells, commercially rents out, distributes or causes communication of the performance to pay a royalty or equitable remuneration, whichever is applicable, to the performer or owner of copyright subsisting in that audiovisual fixation or sound recording, in terms of sections 8A and 9A of the Copyright Act, 1978 (Act No. 98 of 1978)."</p>	<p>Amend s5(5) to read as follows:</p> <p>"(5) Any payment made to a producer in terms of subsection (4) shall be deemed to have discharged any obligation by the person who broadcasts or transmits, sells, commercially rents out, distributes or causes communication of the performance to pay a royalty or equitable remuneration, whichever is applicable, to-</p> <ul style="list-style-type: none"> (i) the performer in terms of section 5(1)(b) above or in terms of section 8A of the Copyright Act, 1978 (Act No. 98 of 1978) in respect of the same act; and (ii) the owner of copyright subsisting in the sound recording, in terms of section 9A of

				the Copyright Act, 1978 (Act No. 98 of 1978)."
6	8D	Compulsory contractual terms	<p>Section 8D of the principal Act is hereby amended by the addition of the following subsections:</p> <p>“(3) The Minister must make regulations prescribing compulsory and standard contractual terms to be included in agreements to be entered into in terms of this Act, which contractual terms must include—</p> <ul style="list-style-type: none"> (a) The rights and obligations of the performer and the relevant producer, broadcaster or user; (b) the royalties or equitable remuneration payable to the performer agreed on as the case may be; (c) the method and period within which any royalty or equitable remuneration must be paid by the relevant producer, broadcaster or user, to the performer; (d) the period of the agreement; (e) a dispute resolution mechanism; and (f) provision for both parties to sign the written agreement as proof of consensus.” 	<p>Amend s8D to read as follows:</p> <p>“(3) Without specifying the content of the agreements or terms, the Minister, may make regulations prescribing a list of contractual terms to be included in agreements to be entered into in terms of this Act. Such list may include—</p> <ul style="list-style-type: none"> (a) the rights and obligations of the parties; performer and the producer, broadcaster or user; (b) the royalties or equitable remuneration payable to the performer agreed on as the case may be including the timeframe for payment; (c) the method and period within which any royalty or equitable remuneration to the performer must be paid; (d) the period of the agreement; (e) a dispute resolution mechanism.; and (f) that both parties sign the agreement”. <p>Amend s3A(3)(a) in clause 3 to read as follows:</p> <p>“The written agreement contemplated in sub-section 2 must at least address the list of contractual terms as may be prescribed.”</p>