



10 March 2023

**Portfolio Committee on Finance, Economic Opportunities and Tourism**  
Western Cape Provincial Parliament

For Attention: Ms Z Adams  
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Our Ref: GL0117/CS/wcpp

Honourable Members

**Submissions on the COPYRIGHT AMENDMENT BILL (CAB) B13D-2017**  
**Submitted to: THE PORTFOLIO COMMITTEE ON FINANCE, ECONOMIC OPPORTUNITIES AND TOURISM, WESTERN CAPE PROVINCIAL PARLIAMENT**  
**Submitted on behalf of: THE WRITERS GUILD OF SOUTH AFRICA**

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**A. INTRODUCTION:**

The Writers Guild of South Africa<sup>1</sup> welcomes the opportunity to comment on the Copyright Amendment Bill B13D-2017<sup>2</sup>. Our submissions on CAB<sup>3</sup> are informed by the insights and experiences of our organisation's work and involvement in the creative industries in South Africa, specifically including the dramatic works and audiovisual script spheres. The Guild represents the interests of its members and other performance writers and makes these submissions on their behalf.

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1 Hereinafter "the Guild".

2 Copyright Amendment Bill B13D-2017, hereinafter "CAB".

3 *Supra*.



From the outset, we wish to make it clear that these submissions should be viewed as intended, being an attempt by the Guild to provide a positive contribution on CAB<sup>4</sup> to the National Council of Provinces Select Committee on Trade and Industry, Economic Development, Small Business, Tourism, Employment and Labour<sup>5</sup> and to the **Portfolio Committee on Finance, Economic Opportunities and Tourism**,<sup>6</sup> and is in no way intended as an outright reproach. It should further be noted that these submissions only address CAB,<sup>7</sup> and not the Performers Protection Amendment Bill (PPAB)<sup>8</sup> as, due to the nature of the Guild's industry involvement, the latter does not apply to the scope of our immediate concerns. Reference may however be made to the PPAB<sup>9</sup> in as far as it is relevant to these submissions.

With resonances of the Guild's prior submissions to the National Assembly Portfolio Committee on Trade and Industry<sup>10</sup> on the Copyright Amendment Bill B13B-2017<sup>11</sup> and to Submissions made herein in January 2023 to the NCOP Select Committee,<sup>12</sup> it should further be stated that the Guild fully supports the initiative to revise the current outdated Copyright Act 98 of 1978<sup>13</sup> and agrees that this "old" act needs to be amended and aligned with international treaties and technological developments. The Guild also supports the initiatives proposed by CAB<sup>14</sup> in an attempt to reward copyright creators and to make works more accessible. However, we are of the humble view that CAB<sup>15</sup> was unfortunately unsuccessful in fully realising the vision of CAB,<sup>16</sup> as the legislative process to date has overlooked several opportunities for further growth, stability, investment, and development in and of the South African creative spheres. We further fear that the initial goals of CAB,<sup>17</sup> however admirable, cannot be achieved, and implementation thereof without the appropriate amendments will undoubtedly have serious repercussions on all stakeholders in the creative industry.

As a beacon for the African continent, South Africa has an opportunity to light the way for the rest of the continent who would undoubtedly look at South African copyright legislation, when passed, for their legislative reform. It is therefore imperative that any new copyright legislation is thoroughly considered and drafted with every aspect and sphere of the creative industries being measured and well thought through. We, as South Africans, legislators and creatives alike, have the opportunity to create a legacy through new copyright legislation of which all stakeholders can be proud.

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4 *Supra.*

5 Hereinafter the "NCOP Select Committee."

6 Hereinafter the "WCPP Committee."

7 *Supra.*

8 Performers Protection Amendment Bill B24-2016, hereinafter "PPAB".

9 *Supra.*

10 Hereinafter the "NA Portfolio Committee."

11 Copyright Amendment Bill B13B-2017, herein after "the 2018 Amendment."

12 *Supra.*

13 Copyright Act 98 of 1978, hereinafter "the Copyright Act".

14 *Supra.*

15 *Supra.*

16 *Supra.*

17 *Supra.*



## **B. BACKGROUND OF THE WRITERS GUILD OF SOUTH AFRICA:**

The Guild replaced the South African Scriptwriters Association (SASWA) formed in 1974. We are the only professional association in South Africa with a mandate to protect, empower and develop performance writers.

A performance writer is someone who creates projects meant to be acted, sung, or spoken out loud (in other words, performed). This includes not only screenwriters who work for film and television, but also playwrights, radio writers, lyricists, computer games creators, animation writers, audio description writers, radio and TV news writers and speechwriters.

We aim to be a support system for the South African performance writer in the local film, television, radio, stage, animation, and new media, including internet, mobile, digital distribution, and gaming.

We are a registered Non-Profit Organisation (NPO) and Public Benefit Organisation (PBO) that is dependent on fundraising. The Guild is currently 422 members strong, made up of student, candidate, full, and corporate members:

- Student – aspirant performance writer enrolled at a legitimate learning institution;
- Candidate – an aspirant performance writer who has not yet had work produced;
- Full – a performance writer who has had work produced in any of the scope disciplines;
- Corporate – writing companies and or production houses employing staff writers.

A constitution and a seven-member volunteer council govern our mandate. The council and part-time staff (an Executive Officer and Administrator) execute our core services:

- Professional Development – outreach programme, workshops, and non-writing skills development;
- Membership – legal advice and representation, discounted services, products, and opportunities, job alerts, WGSa Muse Awards, festivals, and markets, and learning institutions;
- Communications – online networking platform, website, social media, newsletter, and promotional materials;
- Advocacy – drafting of legislation and lobbying for IP and Copyright, right to collective bargaining, standard contracts and rates, and the establishment of a collection's agency.

**C. LEGISLATIVE BACKGROUND:**

The legislative review of the Copyright Act<sup>18</sup> was implemented in 2015 when the initial Bill B13-2017<sup>19</sup> was introduced to address matters pertaining to copyright in general. On 16 May 2017, the Minister of Trade and Industry introduced the initial Bill<sup>20</sup> to the National Assembly. On the same day, the Portfolio Committee on Arts and Culture had a sectoral impact briefing on the Bill<sup>21</sup> (as well as on PPAB<sup>22</sup>).

Between 30 May 2017 and 22 August 2017, the Bill<sup>23</sup> was before the NA Portfolio Committee for deliberation. During this time, Public Participation was afforded on the Bill<sup>24</sup> through three days of public hearings held on 1, 3 and 4 August 2017 and one day of key stakeholder engagement.

On 11 September 2017, the Secretary of Parliament referred the Bill<sup>25</sup> to the National House of Traditional Leaders for comments. Between 10 October 2017 and 15 November 2018, the NA Portfolio Committee met on thirty-two occasions where they continued deliberations on the Bill.<sup>26</sup> Around this point, the revised 2018 Amendment<sup>27</sup> was introduced and the 2018 Amendment<sup>28</sup> was subsequently passed by the National Assembly and forwarded to the National Council of Provinces for its concurrence on 5 December 2018.

At the National Council of Provinces, the 2018 Amendment<sup>29</sup> was deliberated on three occasions between 13 February 2019 and 20 March 2019, whereafter the 2018 Amendment<sup>30</sup> was passed by both Houses and forwarded to President Cyril Ramaphosa (the “President”) for assent on 28 March 2019, where it remained until 16 June 2020, at which instance the 2018 Amendment<sup>31</sup> was returned to the National Assembly (and not ascended) by the President. At this stage, the following reservations were listed by the President:

- Tagging, stating that the 2018 Amendment<sup>32</sup> should have been classified as a Section 76 Bill, *ie* to be considered by the National Council of Provinces (NCOP) as it may relate to trade and cultural matters;

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18 *Supra.*

19 Copyright Amendment Bill B13-2017, hereinafter “the Bill”.

20 B13-2017, *supra.*

21 B13-2017, *supra.*

22 *Supra.*

23 B13-2017, *supra.*

24 B13-2017, *supra.*

25 B13-2017, *supra.*

26 B13-2017, *supra.*

27 *Supra.*

28 *Supra.*

29 *Supra.*

30 *Supra.*

31 *Supra.*

32 *Supra.*

- Retrospective and arbitrary deprivations of property in clauses 5, 7 and 9, which inserted Sections 6A(7), 7A(7) and 8A(5) in CAB<sup>33</sup>;
- The lack of public participation related to the “Fair Use” concept contained in the 2018 Amendment<sup>34</sup>;
- Impermissible delegation of legislative power to the Minister in clauses 5, 7 and 9 of the 2018 Amendment<sup>35</sup>;
- The copyright exceptions, as some clauses may constitute arbitrary deprivation of property, which may affect the right to freedom of trade, occupation, and profession; and
- The question of the 2018 Amendment’s<sup>36</sup> compliance with international treaties and the implications thereof.

Subsequently, the 2018 Amendment<sup>37</sup> returned to the National Assembly where, between 18 August 2020 and 26 August 2020 it was before the Committee on Trade and Industry for deliberation on three occasions, thereafter before the Committee on Sports, Arts and Culture on 4 September 2020, whereafter it returned to the Committee on Trade and Industry who deliberated on the 2018 Amendment<sup>38</sup> on 5, 12 and 14 May 2021, respectively.

Thereafter the 2018 Amendment<sup>39</sup> was recommitted to the NA Portfolio Committee, by the National Assembly, and referred to the Joint Tagging Mechanism on 1 June 2021. Subsequently, on 4 June 2021, The NA Portfolio Committee invited stakeholders and interested parties to submit written submissions with reference only to clause 13 (Sections 12A, 12B, 12C and 12D), clause 19 (Section 19B) and clause 20 (Section 19C) of the 2018 Amendment<sup>40</sup> (*ie*, those Sections pertaining to *inter alia* the “Fair Use” doctrine) – with the provided deadline of 9 July 2021. On this invitation, the Guild made its first written submissions.<sup>41</sup> On 11 and 12 August 2021, the NA Portfolio Committee held public hearings where the Guild was also offered the opportunity to make oral submissions.

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33 *Supra.*

34 *Supra.*

35 *Supra.*

36 *Supra.*

37 *Supra.*

38 *Supra.*

39 *Supra.*

40 *Supra.*

41 The first submissions by the Guild dated 9 July 2021 is available upon request.

Subsequently, on 9 November 2021 and 12 November 2021 respectively, responses to the submissions were offered by the DTIC and CLSO. Between 16 November 2021 and 30 November 2021, various internal engagements occurred relating to the proposed amendments to the 2018 Amendment<sup>42</sup> as it stood at that time. This was followed by a response to public submissions by the CTIC and Parliamentary Legal Advisor on 6 May 2022. On 11 May 2022 a Committee Report on the Parliamentary Legal Advisor's input was published, followed by various deliberations by the NA Portfolio Committee on 17, 18 and 25 May 2022, which culminated in an Oversight Report on 25 May 2022.

Subsequently, CAB<sup>43</sup> was introduced and adopted by the NA Portfolio Committee on 8 June 2022, and a formal Committee Report was offered on 10 June 2022. The National Assembly thereafter passed CAB<sup>44</sup> and transmitted it to the National Council of Provinces for concurrence, on 1 September 2022. Thereafter, the NCOP Select Committee held two workshops, on 18 and 25 October 2022 respectively, regarding CAB.<sup>45</sup> These workshops ultimately concluded that, on 7 December 2022, the NCOP Select Committee invited<sup>46</sup> stakeholders and interested parties to make written submissions on CAB,<sup>47</sup> on which the Guild made written submission thereon on 27 January 2023. Subsequently, the opportunity was afforded for stakeholders to make further written submissions to specific committees of the four of the Provincial Parliaments and Provincial Legislators, including to the WCPP Committee.

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42 *Supra.*

43 *Supra.*

44 *Supra.*

45 *Supra.*

46 The call for submissions read: *"The Bill [ie CAB, supra] seek to amend the Copyright Act, 1978, so as to define certain words and expressions; to allow for further limitations and exceptions regarding the reproduction of copyright works; to provide for the sharing of royalties in copyright works; to provide for the payment of royalties in respect of literary, musical, artistic and audiovisual works; to provide for resale royalty rights; to provide for recordal and reporting of certain acts; to provide for the accreditation of collecting societies; to provide for a mechanism for settlement of disputes; to provide for access to copyright works by persons with a disability; to provide for the licensing of orphan works; to strengthen the powers and functions of the Copyright Tribunal; to provide for prohibited conduct in respect of technological protection measures; to provide for prohibited conduct in respect of copyright management information; to provide for protection of digital rights; to provide for certain new offences; and to provide for matters connected therewith."*

47 *Supra.*



**D. SPECIFIC CONCERNS IN RESPECT OF CAB (B13B-2017):**

Again, echoing the Guild's prior submission, it wishes to commend the NA Portfolio Committee and the NCOP Select Committee on their efforts and significant headway made with CAB<sup>48</sup> to date, as it has undoubtedly come a long way from the initially proposed Bill.<sup>49</sup> We further wish to acknowledge that CAB<sup>50</sup> has several aspirations that, with the appropriate revision, has the potential to positively impact certain areas of the creative industry.

That said, respectfully, it should be recognized that CAB<sup>51</sup> shall remain flawed for as long as it remains a "patched-up and repaired" version of the initial Bill,<sup>52</sup> which could have been drafted in a more adequate and balanced manner and exhibited a misinterpretation of key copyright concepts. It is our opinion that despite the NA Portfolio Committee's best efforts and intentions, and albeit that CAB<sup>53</sup> is a significant improvement in the Copyright Act<sup>54</sup> and initial Bill,<sup>55</sup> the flaws of the initial Bill,<sup>56</sup> unfortunately, trickled down into CAB.<sup>57</sup>

Now, in light of the NCOP Select Committee's recent call for submissions, along with the call for submissions by the WCPP Committee, the Guild respectfully submitted the below. Kindly note that where the Guild omitted to comment on certain sections of CAB,<sup>58</sup> such comments were not withheld due to the Guild considering the concerns trivial but, in the interest of brevity, the Guild chose to focus on their more pressing issues with CAB<sup>59</sup> in these written submissions – namely the proposed amendments to Sections 1, 6A to 8A, 12A, 22(3), 39 and 39B, and 43 to 45 of the Copyright Act.<sup>60</sup>

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48 *Supra.*

49 B13-2017, *supra.*

50 *Supra.*

51 *Supra.*

52 B13-2017, *supra.*

53 *Supra.*

54 *Supra.*

55 B13-2017, *supra.*

56 B13-2017, *supra.*

57 *Supra.*

58 Section 1(1)(xxvii) of the Copyright Act, *supra.*

59 *Supra.*

60 *Supra.*

## 1. Definitions:

The first concern the Guild which was raised to the NCOP Select Committee, and herein raises to the WCPP Committee is the lack of appropriate definitions in CAB<sup>61</sup> relevant to the specific creative industry whereunder the Guild and its members function and interact.

Although the Copyright Act<sup>62</sup> does in fact define “dramatic work”,<sup>63</sup> and CAB<sup>64</sup> does seek to introduce a definition for “audiovisual work”,<sup>65</sup> there lacks an appropriate and clear distinction between these works. It may be misconstrued that dramatic work would fall under audiovisual work, at least to some extent, and as such it is imperative to note that although all audiovisual work may be dramatic work, not all dramatic work is necessarily audiovisual work. Furthermore, the flawed inclusion of “dramatic work” under the definition of “literary work” as it currently stands in the Copyright Act<sup>66</sup> is also an outdated approach which does not accurately depict the complexity of such works. This necessitates the need for dramatic work to be appropriately re-defined in CAB.<sup>67</sup>

Despite being included under the broader definition of literary work in the Copyright Act,<sup>68</sup> the lack of a definition of dramatic work as a work in its own right has far-reaching consequences. In essence, it is inappropriate to include dramatic work under literary work, as these two works are separate concepts and, as such, should be defined individually and treated as separate to one another. Interestingly, the UK Act<sup>69</sup> defines literary work to specifically exclude dramatic work. It is therefore, in the Guild’s view, more appropriate for CAB<sup>70</sup> to define dramatic work as a separate concept from literary work and exclude it from the current inclusive definition.<sup>71</sup>

Herein, the Guild proposes the following (separate standing) definition for dramatic work be considered – as well as that the term is added as a separate concept throughout CAB.<sup>72</sup>

*“dramatic work” means any piece for recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise and any compilation of dramatic works.*

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61 Section 1 of CAB, *supra*.

62 *Supra*.

63 Section 1(1)(xvii) of the Copyright Act, *supra*.

64 *Supra*.

65 Clause 1(b) of CAB, *supra*.

66 Section 1(1)(xxvii) of the Copyright Act, *supra*.

67 *Supra*.

68 Section 1(1)(xxvii) of the Copyright Act, *supra*.

69 Section 3(1) of the UK Copyright, Designs and Patents Act of 1988, hereinafter “the UK Act,” defines literary work as “...any work, other than a dramatic or musical work...”. Interestingly, the UK Act, *supra*, refer to various works throughout the document in a manner where literary work and dramatic work is presented as respective forms of work and not with one as part of another.

70 *Supra*.

71 Section 1(1)(xxvii) of the Copyright Act, *supra*.

72 *Supra*.

A further opportunity which was overlooked is that CAB<sup>73</sup> was the opportunity to provide clarity on who is viewed as a “producer”<sup>74</sup> by adding a definition for this term. The Guild, therefore, suggests that consideration be given to the possible addition of an appropriate definition for this person in CAB.<sup>75</sup> Herein, the Guild proposes the following definition:

*“producer” in relation to a sound recording or an audiovisual work, means the person by whom the arrangements necessary for the making of the sound recording or audiovisual work are undertaken.*

## 2. Royalties and Fair Remuneration:

The Guild wishes to ensure fair remuneration to its members for complete work (usually once-off) and to address provisions for negotiation on royalties. This topic of fair remuneration as it stands does not have a specific remuneration structure in mind, but rather seeks to allow authors (and other creators) the opportunity to negotiate on such remunerations.

Undeniably, the Guild applauds the policy objective to reform copyright in South Africa in order to improve the ability of South African authors to receive fair remuneration for the commercial exploitation of their work. With this objective in mind, CAB<sup>76</sup> seeks to introduce new statutory royalty entitlements in favour of authors of literary work which are fixed in audiovisual works. This will however create legal uncertainty, which will further be worsened by the contract override provision in Section 39B<sup>77</sup> - ultimately having the opposite effect as what was envisioned in the initial policy objectives.

Unfortunately, the attempt to legislate a universal “*one size fits all*” solutions across multiple commercially unrelated copyright industries is ill-conceived. Each industry has its own unique structures wherein the copyrighted work related to that specific industry functions. The reality is that any attempt to universally address an issue in one specific industry may have a detrimental impact on another.

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73 *Supra.*

74 Section 191HA(7) of the UK Act, *supra*, producers (or principal directors) as “...*the person by whom the arrangements necessary for the making of the sound recording or film are undertaken...*”. Furthermore, Section 2 of the Canadian Copyright Act, hereinafter “the Canadian Act,” defines producers or principal directors (or “makers”) as “...*in relation to a cinematographic work, the person by whom the arrangements necessary for the making of the work are undertaken... ... in relation to a sound recording, the person by whom the arrangements necessary for the first fixation of the sounds are undertaken...*”. Notably, the Canadian Act, *supra*, also refers to these persons as “makers” as opposed to “authors”, which is also more appropriate in the Guild’s opinion.

75 *Supra.*

76 Through Sections 6A, 7A and 8A of CAB, *supra*.

77 CAB, *supra*.



The restrictions on contractual freedom contained in CAB<sup>78</sup> preventing authors to contractually negotiate on their work and deal with it as they deem fit has far-reaching consequences. Contractual freedom is of fundamental importance to allow parties involved in audiovisual productions to negotiate specific remuneration, usually under terms unique to the specific project. The Guild therefore respectfully requests that the proposed Sections 6A, 7A and 8A of the Copyright Act<sup>79</sup> be rejected, or at least that the restrictive sections of CAB<sup>80</sup> be amended to cater for contractual freedom through the introduction of the below phrase where relevant:

*“In the absence of an agreement to the contrary...”*

With the appropriate amendments to CAB.<sup>81</sup> authors and creators would be in a position to negotiate alternative terms to CAB’s restrictive terms (*our emphasis*).

### **3. 25-Year Limitation on Assignments and Contractual Freedom:**

In today’s environment and the manner in which works are consumed by users, especially musical and audiovisual works, the high-quality and most valued works are those that are multi-authored and comprise of contributions from many sources. The need for such works to be brought together into a single ownership is also essential to the mentioned quality and value. For example, here we can highlight the importance of a producer’s ability to consolidate rights in an audiovisual work.

To start, it is imperative to note that the 25-year limitation was initially intended to benefit musicians and composers, and not authors of other forms of work such as literary or dramatic work. To be blunt, this amendment proposed by CAB<sup>82</sup> will have a detrimental effect on the creative industry as it would impair the desirability to include South African authors in new works.

Furthermore, Section 39B seeks to introduce indiscriminate provisions which will imply that the 25-year limitation is contractually un-waivable. Mention can further be made of the contract override provision as contemplated in Section 39B.<sup>83</sup> In short, authors would not be able to assign their rights for the lifetime of the copyright. This limitation on contractual freedom would apply to authors of dramatic or audiovisual work, as well as CAB<sup>84</sup> proposes that all assignments of copyright in literary work would only be valid for a maximum of 25 years<sup>85</sup>.

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78 *Supra.*

79 *Supra.*

80 *Supra.*

81 *Supra.*

82 *Supra.*

83 CAB, *supra.*

84 *Supra.*

85 Section 22 of CAB, *supra.*



The contract override provision further entails that these authors may not contractually negotiate freely, which will undoubtedly have a severe impact on the South African creative industries and may cause it to miss out on high-value opportunities.

Although reversion rights do exist in other countries, they are vastly different to those proposed by CAB.<sup>86</sup> Both US and EU laws provide for reversion rights in certain instances. However, where such rights are provided, audiovisual works are either wholly excluded or adequate safeguards and conditions are put in place to mitigate the impact of the reversion.<sup>87</sup> Unlike these countries, CAB<sup>88</sup> does not provide any suitable exclusions or safeguards to the proposed reversion rights – which may be in contravention of international treaties.<sup>89</sup>

These restrictions in terms of commercialisation for South African works would place authors at a disadvantage compared to their counterparts from countries without such limitations. These provisions will further lead to a decrease in incentives to license older works and a decrease in the already feeble remuneration for South Africa's authors, again harming those whom CAB<sup>90</sup> was intended to protect.

As such, on these points, the Guild requests that Section 22(3)<sup>91</sup> be rejected, or as an alternative, that the sections be reconsidered with proper research being conducted on the possibility of balancing of rights. Also, the contract override provision under Section 39B<sup>92</sup> should be reconceptualised.

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86 *Supra.*

87 In the USA the right to terminate an assignment after 35 years from the date of the original grant only applies to rights arising under US law, and does not include “works made for hire” (*ie* commissioned works) and further permits the continued use of derivative works which means that any adaptations of music, scripts from literary works can continue to be used, such that their use in a television program or film does not have to suddenly stop, amongst other limitations (see the *Netflix submissions* of 2022)

88 *Supra.*

89 Such as the Berne Convention of 1967

90 *Supra.*

91 CAB, *supra.*

92 CAB, *supra.*

#### 4. Exceptions and Fair Use:

Although the Guild agrees that the current copyright exceptions in the Copyright Act must be updated to meet the circumstances of the new digital age, the introduction and/or amendment of copyright exceptions must be subject to legitimate needs identified in a socio-economic impact assessment and must be weighed up in an appropriate legal analysis against prerequisites which take precedent.<sup>93</sup> That said, the Guild has raised its concerns on this point to the NA Portfolio Committee, and will, in the interest of brevity, not elaborate thereon in these submissions.

Copyright exceptions such as the introduction of the fair use doctrine through CAB<sup>94</sup> are an attempt to balance the rights of copyright holders with public interest objectives that allow copyrighted works to be used without the consent of or payment to the copyright owner. It is however imperative to note that these copyright exemptions are a statutory defence to copyright infringement and not a right afforded to a user to reproduce or deal with the work in any particular manner.<sup>95</sup>

Despite amendments from the previously proposed versions of the Bill,<sup>96</sup> there exists an overwhelming reality that CAB<sup>97</sup> falls short in protecting the authors (and other creators) and owners of copyright works. The uncertainty caused by *inter alia* the "fair use" doctrine, along with the increased need for court intervention in instances of unauthorised use, will inevitably lead to a costly, and ultimately inefficient copyright system.

#### E. CONCLUSION IN SUMMARY:

The concerns raised in these submissions are, in the Guild's view, serious and are shared by the Guild's members and various other stakeholders affected by CAB,<sup>98</sup> including those in the South African academic and legal fraternities.<sup>99</sup> The Guild therefore humbly requests that the consideration of CAB<sup>100</sup> be done with the assistance (and inclusion) of copyright experts with practical experience, if not done so already.

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93 These include the Bill of Rights, Chapter 2 of the South African Constitution of 1995 and the "three step test" as contained in Article 9(2) of the Berne Convention of 1967. The latter entails that limitations and exceptions to copyright cannot be overly broad, cannot rob right holders of a real or potential source of income that is substantive and cannot do disproportional harm to rights holders.

94 *Supra.*

95 Dean and Karjiker *Handbook of South African Copyright Law* (2015) par 9.1.1.

96 B13-2017, *supra*, and B13B-2017, *supra*.

97 *Supra.*

98 *Supra.*

99 This statement is founded in the vast number of comments and submissions made on earlier versions of the Bill, *supra*, as well as the records of public engagement in both workshops on CAB, *supra*, and public hearings related to CAB, *supra*, to date.

100 *Supra.*



In essence, without seeing the need for the Guild to again elaborate on already stated points and topics, the main overarching issue with CAB<sup>101</sup> is twofold: the first issue is that the intended impact that CAB<sup>102</sup> sought to achieve was missed, being to allow creatives to earn a fair and reasonable income through their works, where the second issue is that CAB<sup>103</sup> missed this opportunity to address certain outdated or lacking definitions and deficiencies contained in the Copyright Act.<sup>104</sup>

Respectfully, CAB<sup>105</sup> remains to be a poorly compiled, hastily drafted, broadly stated bill which is not expressly clear. The implications of CAB<sup>106</sup> will be that authors *et al* are not free to deal with their work as they see fit, which will ultimately result in the loss of opportunities to all South African authors – which will have further economic implications on South Africa.

Irrespective of the initial intention of CAB,<sup>107</sup> which was admirable, enacting CAB<sup>108</sup> as it currently stands will be detrimental to the people the bill is intended to protect. The reality is, in the Guild's view at least, that CAB<sup>109</sup> will have the exact opposite effect as originally intended in all industries related to or reliant on copyright.

The Guild again thanks the WCPP Committee for the opportunity to make these written submissions. We trust our submissions will be considered and we look forward to further engagements on this matter.

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101 *Supra.*  
102 *Supra.*  
103 *Supra.*  
104 *Supra.*  
105 *Supra.*  
106 *Supra.*  
107 *Supra.*  
108 *Supra.*  
109 *Supra.*



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**G. ENDORSEMENT OF SUBMISSIONS:**

These submissions are supported and endorsed by the following entities:

- The Members of the Writers Guild of South Africa (WGSA)
- International Affiliation of Writers Guilds (IAWG)
- Federation of Screenwriters in Europe (FSE)