

Copyright Amendment Bill and the Performers' Protection Amendment Bill - Background document for Portfolio Committee on Trade and Industry

25 August 2020



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Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

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Purpose of this document

To brief the Portfolio Committee on Trade and Industry on the Bills remitted by the President and to give an overview of the Copyright Amendment Bill and the Performers' Protection Amendment Bill.



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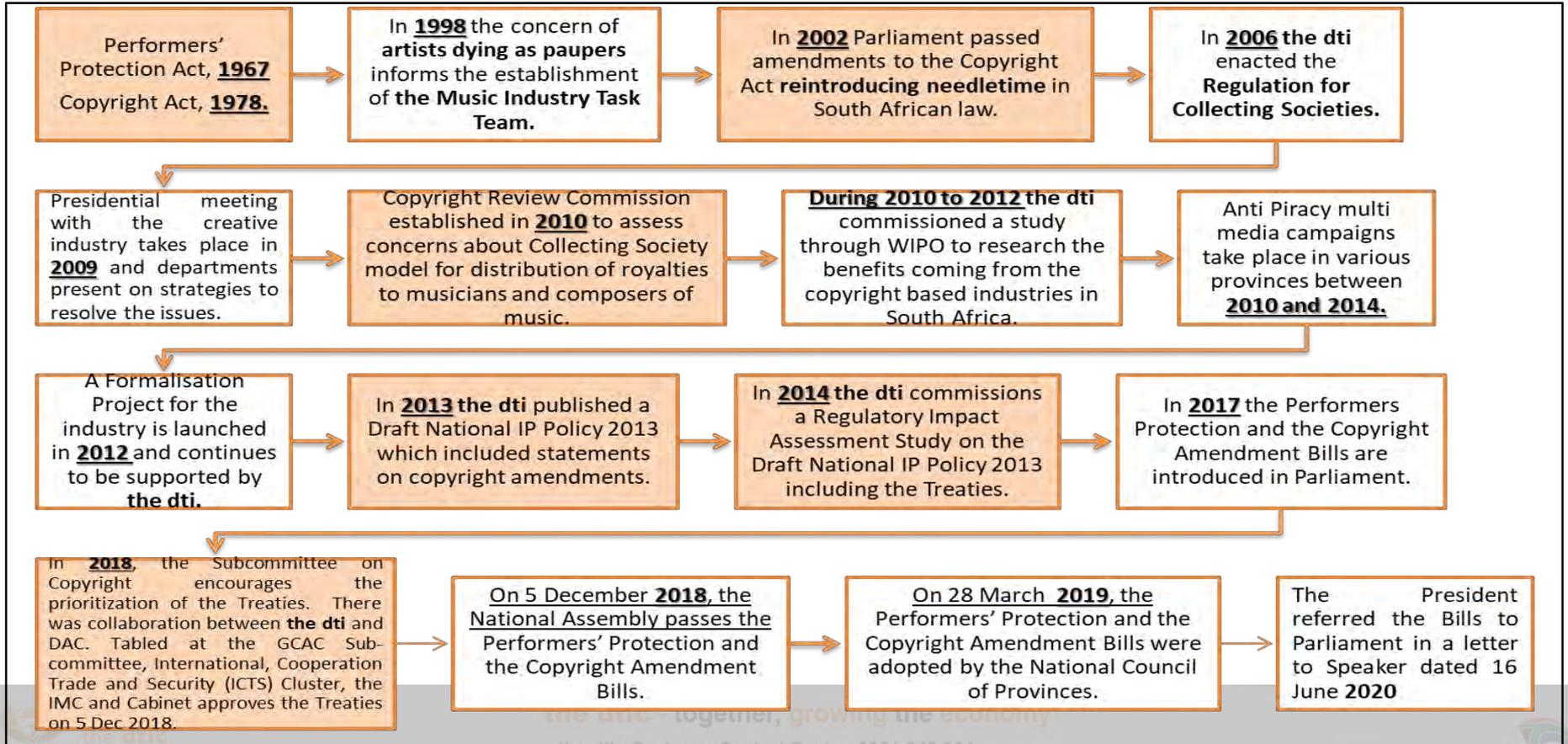
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Background to the Bills - processes



Challenges currently faced by the Industry

- The sector is currently not organised for bargaining purposes.
- Lack of formalisation of the creative industry which exposes it to abuse.
- Piracy / Counterfeiting is rife and enforcement agencies not coordinated.
- Unfair Contracts resulting in the perpetual signing away of; economic rights and the lack of updated industry contracts for freelance performers.
- Non – payment royalties.
- Not all Collecting Societies are regulated by the Act.
- Reciprocity regarding payment of royalties from other jurisdictions.
- Disputes not resolved speedily.
- The digital environment is not catered for in the Acts.
- Non- Ratification of Treaties.
- Restrictive Exceptions and Limitations/barriers to access.



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Objectives of the Copyright Amendment Bill (CAB)

- To develop a legal framework on Copyright and related rights that will promote accessibility to producers, users and consumers in a balanced manner; this includes flexibilities and advancements in the digital space that should empower all strata of the citizens of South Africa.
- To introduce provisions which deal with matters pertaining to collective management. Collecting societies will only be allowed to collect for their registered members and all collecting societies have to be accredited with the Companies and Intellectual Property Commission (“CIPC”).
- To deal with the protection of works and rights of authors in the digital environment.
- The Bill provides for standard contractual terms to empower authors when negotiating contracts. This will close the gap that has resulted in unfair contractual terms that has led to creators signing away their rights.



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Objectives of the CAB

- To introduce a Resale Royalty Right. This Resale Royalty Right means that an artist could be entitled to a royalty when their original work is resold commercially.
- To introduce a hybrid system for the reproduction of copyright material for limited uses or purposes without obtaining permission and without paying a fee or a royalty. Furthermore, this provision stipulates the factors that need to be considered in determining whether the copyright work is used fairly.
- To provide for exceptions and limitations in education, libraries, archives and museums, computer programmes; To provide for the availability of accessible format copies of a work to accommodate persons with disabilities. This provision extends beyond matters pertaining to the blind and includes other disabilities such as learning disabilities, dyslexia etc.
- To provide for the sharing of royalties in respect of literary, musical, artistic and audiovisual works.
- To provide for the recordal and reporting of certain acts.
- To strengthen the Copyright Tribunal so that it can deal with all Copyright and related rights matters.
- To address the rights of authors in commissioned works.
- To introduce Technological Protection Measures (TPMs) to reduce incidents of copyright infringement.

What informed the Bills: CRC recommendations (1)

the dtic draft Bill took into account the recommendations from the Copyright Review Commission (CRC). The amendments set out in the Bill in terms of collective management, royalties, the Tribunal are a direct result of the following CRC recommendations:

- South Africa should amend its Copyright Act by adopting inter alia the right to communicate literary and musical works to the public and the right to make available copies of sound recordings.
- The copyright law should be amended to allow the Registrar to take over the administration (as opposed to the withdrawal of accreditation) of any relevant Collecting Society.
- Legislation be amended to allow for one Collecting Society per set of rights with regard to all rights governed by the Copyright Act of 1978 (performance, needle time and mechanical rights).
- The law should be amended to allow for all music-rights. Collecting Societies ought to fall within the ambit of the regulations issued under the Act.

What informed the Bills: CRC recommendations (2)

- The legislation to be amended as follows: retention of music usage information to be compulsory for large music users.
- The Copyright Act must be amended to allow rights holders (as well as users) to engage the Copyright Tribunal in disputes about the appropriate tariffs to be applied.
- The Acts should be amended to provide that needle time be divided equally between the owner(s) of the copyright in the sound recordings and the owner(s) of the neighbouring right to needle time.
- The Copyright Act must be amended to include a section modelled on that in the US Copyright Act providing for the reversion of assigned rights 25 years after the copyright came into existence.
- The definitions of local music contained in the Electronic Communications Act should be enlarged.
- The Copyright Act should be amended to adopt the right 'to communicate the work to the public' and the 'making available' right as two new exclusive rights of copyright owners.

What informed the Bills

- Several studies were conducted prior to the Bills being introduced into Parliament as early as 2009.
- In 2014, **the dtic** commissioned a Regulatory Impact Assessment Study on the Draft National Intellectual Property (IP) Policy 2013, it included the Treaties, fair use, Treaties, exceptions, etc.
- The WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Beijing Treaty on Audiovisual Performances and the Marrakesh Treaty informed some provisions in the Bills.
 - In some respects **the dtic** considered the Treaties, in line with the Constitution, developmental consideration in the best interest of the creators and other rights holders.
- The Socio Economic Impact Assessment report was conducted for the Bill by DPME.



Treaties Informing the Bills

- **WIPO Performances and Phonograms Treaty (WPPT)** administered by the World Intellectual Property Organisation (WIPO), deals with the rights of two kinds of beneficiaries, particularly in the digital environment: (i) performers (actors, singers, musicians, etc.); and (ii) producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds). South Africa is not a member.
- **The Beijing Treaty on Audio Visual Performances (BTAP)** deals with the intellectual property rights of performers in audio-visual performances. It is administered by WIPO, South Africa is not a member.
- **WIPO Copyright Treaty (WCT)** deals with protection for authors of literary and artistic works, such as writings and computer programs; original databases; musical works; audiovisual works; works of fine art and photographs, South Africa is not a member.
- **Marrakesh VIP Treaty** (South Africa not a member): to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled, South Africa is not a member.
- **Berne Convention** (South Africa is a member): deals with the protection of literary and artistic works.

Treaties Informing the Bills

- As South Africa intends joining several international treaties the Act had to be amended in order to cater for the application of these treaties and ensure that the domestic law is in line with the multilateral framework.
- South Africa intends joining the following treaties:
- The Treaties informing/incorporated in the CAB are: the WIPO Copyright Treaty (WCT) and the Marrakesh Treaty to Facilitate Access for Persons Who are Blind, Visually Impaired or otherwise Print Disabled; in terms of this Treaty the African Group at WIPO held a broader position and therefore the Bill follows this broader position by facilitating access of works for other disabilities such as learning and dyslexia. Broader application of the Treaty is currently under review at WIPO;
- The Treaties informing/incorporated in the PPAB are: the WIPO Performances and Phonograms Treaty (WPPT) and the Beijing Treaty on Audio Visual Performances (BTAP);
- Treaties allow for policy space to address domestic issues.

Treaties Informing the Bills

- The WIPO Treaties deal with some of the following matters:
- WCT: Scope of Copyright Protection, Computer Programs Compilations of Data (Databases), Right of Distribution, Right of Rental, Right of Communication to the Public, Limitations and Exceptions, Obligations concerning Technological Protection Measures and Obligations concerning Rights Management Information;
- Marrakesh: Beneficiary Persons, National Law Limitations and Exceptions Regarding Accessible Format Copies, Cross-Border Exchange of Accessible Format Copies, Importation of Accessible Format Copies, Obligations Concerning Technological Measures, Cooperation to Facilitate Cross-Border Exchange, General Principles on Implementation, General Obligations on Limitations and Exceptions and Other Limitations and Exceptions.

Treaties Informing the Bills

The WIPO Treaties deal with some of the following matters:

- WPPT: Beneficiaries of Protection under this Treaty, National Treatment, Rights of Performers: Moral Rights of Performers, Economic Rights of Performers in their Unfixed Performances, Right of Reproduction, Right of Distribution, Right of Rental, Right of Making Available of Fixed Performances, Rights of Producers of Phonograms: Right of Reproduction, Right of Distribution, Right of Rental, Right of Making Available of Phonograms, Right to Remuneration for Broadcasting and Communication to the Public, Limitations and Exceptions, Obligations concerning Technological Measures and Obligations concerning Rights Management Information;
- BTAP: Beneficiaries of Protection, Moral Rights, Economic Rights of Performers in their Unfixed Performances, Right of Reproduction, Right of Distribution, Right of Rental, Right of Making Available of Fixed Performances, Right of Broadcasting and Communication to the Public, Transfer of Rights, Limitations and Exceptions, Obligations concerning Technological Measures and Obligations concerning Rights Management Information.

Treaties Informing the Bills

- How are the Treaties incorporated in the Bills?
 - Treaty language was incorporated in the Bills,
 - Provisions on subject matter such as economic and moral rights were incorporated into the Bills (BTAP, WPPT & WCT);
 - Treaty language often uses shall or may provide adequate legal protection on certain matters, provisions drafted in line with Treaty Articles and ensuring provisions strike a balance, provide legal protection and address national needs;
 - Some examples- Cross border measures for people with disabilities (MT), introduction of technological protection measures (WCT), economic and moral rights for audio visual performers (BTAP) and ensuring all exceptions and limitations are in line with the three step test (WCT & WPPT).

PERFORMERS' PROTECTION AMENDMENT BILL



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Background

- Performers' Protection is a right related to that of Copyright that caters specifically for the protection of the rights of performers.
- In 2010 **the dtic** commissioned a study through the World Intellectual Property Organisation (WIPO) to research the benefits coming from the copyright-based industries in South Africa.
- In 2015 the CAB (The PPAB was still combined with the CAB) was published for public consultation purposes and 122 written submissions were received. The CAB and PPAB were separated into two (2) different Bills based on comments received.
- Cabinet approved the PPAB for introduction into Parliament on 08 June 2016.
- In 2016 Socio Economic Impact Assessments (SEIAS) was completed on the PPAB.
- The Bill was introduced to Parliament and referred to the Committee on 2 December 2016.



Background

- The Committee held a workshop with the Department of Trade, Industry and Competition (**the dtic**) on intellectual property and the key concepts related to the Performers' Protection Amendment Bill on 7 February 2017. It also received a briefing on the Performers' Protection Amendment Bill on 21 February 2017.
- The Committee advertised and called for written submissions in national, provincial and regional newspapers in all official languages from 19 January until 6 February 2017. The Committee received 22 submissions.
- Due to the cross-references with the Copyright Amendment Bill, which had not yet been tabled, the Committee resolved to await the tabling of the Copyright Amendment Bill to ensure alignment between the two Bills. The Copyright Amendment Bill was subsequently introduced on 16 May 2017.
- On 13 and 14 September 2018 public hearings on the PPAB were held with **the dtic** responding to submissions from the hearings on 09 October 2018.
- Further public consultations on the PPAB were held by the Trade and Industry PC between October and November 2018 wherein additional comments on specific provisions of the PPAB were requested from the public.
- The Trade and Industry PC adopted the PPAB on 15 November 2018. The National Assembly passed the PPAB on 5 December 2018.

Challenges Currently Faced by Industry

- Non-payment of repeat fees.
- Non-payment for commercial exploitation.
- Unfair Contracts resulting in the perpetual signing away of artists' and performers' economic rights.
- The lack of updated industry contracts for freelance performers.
- Non-recognition of the moral and economic rights of performers.
- Disputes not resolved speedily.
- The digital environment is not catered for in the Acts wherein audiovisual content is consumed (Non-ratification of digital Treaties).

Objectives of the PPAB

- To address the challenges facing the creative industry from non-payment of royalties; lack of formalisation of the creative industry which exposes it to abuse; piracy; and rights of performers by making provision for:
 - extending the protection of performers' moral and economic rights;
 - written agreement where rights of performers are involved;
 - royalties or equitable remuneration to be payable when performance is sold or rented out;
 - recordal and reporting of certain acts and offences thereof;
 - the Minister to prescribe compulsory and standard contractual terms as well as guidelines for a performer to grant consent under this Act;
 - the protection of rights of producers of sound recordings; and
 - prohibition of conduct in respect of technological protection measures ("TPMS") and copyright management information.

ANNEX 1: COPYRIGHT AMENDMENT BILL PROVISIONS



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Proposed Amendments

Provisions	What the Bill provides
Definitions	<p>Clause 1 proposes amendments to certain definitions and the insertion of definitions of ‘accessible format copy’, ‘art market professional’, ‘audiovisual fixation’, ‘Collecting Society’, ‘commercial’, ‘Companies Act’, ‘copyright management information’, ‘orphan work’, ‘performer’, ‘person with a disability’, ‘technologically protected work’, ‘technological protection measure’, ‘technological protection measure circumvention device’, ‘Tribunal’. <i>Pages 2-4 of the Bill.</i></p>
Scope of Copyright Protection (WIPO Copyright Treaty)	<p>Clause 2 proposes the insertion of section 2A in the Act, circumscribing the extent of copyright protection.</p> <p>The clause provides that copyright protection subsists in expressions and not in ideas, procedures, methods of operation or mathematical concepts.</p> <p>In the case of computer programs, in interface specifications, a table or compilation which by reason of the selection or arrangement of its content, constitutes an original work.</p> <p>The clause provides no protection to an expression of official texts of legislation or speeches of a political nature.</p> <p><i>Page 4 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
State or Organisation Funded Intellectual Property	Clause 3 of the Bill proposes an amendment to section 5 of the Act by providing for ownership of copyright funded by the local organisation. <i>Page 4 of the Bill.</i>
Communication to the public of a literary or musical work, making available and distribution of an original or a copy of a work (WIPO Copyright Treaty)	Clause 4 of the Bill proposes an amendment to section 6 of the Act by providing for communication to the public of a musical work, by wire or wireless means, including internet access and making available to the public a work in such a way that members of the public may access such work from a place and at a time individually chosen by them, whether interactively or non-interactively. <i>Page 4 of the Bill.</i>

Proposed Amendments

	What the Bill provides
Share in royalties regarding literary or musical works	Clause 5 of the Bill proposes an insertion of a new section 6A specifically providing for royalty sharing after assignment of copyright in a literary or musical work or where the author of a literary or musical work authorised another to do any of the acts contemplated in section 6. The share of royalties to be determined by a written agreement in a prescribed manner. <i>Pages 5-6 of the Bill.</i>
Distribution of an artistic work, Communication to the public and making available to the public (WIPO Copyright Treaty)	Clause 6 of the Bill proposes an amendment to section 7 by providing for the distribution of an artistic work to the public, communication to the public of an artistic work by wire or wireless means, including internet access and making available to the public a work in such a way that members of the public may access such a work from a place and at a time individually chosen by them, whether interactively or non-interactively. <i>Page 6 of the Bill.</i>

Proposed Amendments

	What the Bill provides
<p>Sharing of royalties regarding visual artistic work</p>	<p>Clause 7 of the Bill inserts a new section 7A specifically providing for royalty sharing after assignment of copyright in an artistic work or where the author of an artistic work authorised another to do any of the acts contemplated in section 7. The share of royalties to be determined by a written agreement in a prescribed manner.</p> <p><i>Pages 6-7 of the Bill.</i></p>
<p>Resale Royalty Right regarding virtual artistic works: section 7B</p>	<p>Clause 7 also inserts section 7B that provides that the author of visual artistic work in which copyright subsists or his or her heir must be paid royalties on the commercial resale within the art market of that work.</p> <p>Royalties in respect of visual artistic works shall be payable at the rate prescribed by the Minister after consultation with the Minister responsible for arts and culture.</p> <p>The seller and the art market professional are jointly and severally liable to pay the royalties to the author. It also provides in section 7C to 7E for authors of visual artistic works to enjoy the inalienable resale royalty right on the commercial resale of his or her original work of art, subsequent to the first assignment by the author of such work of art. This includes the resale, duration, assignment or waiver of the resale royalty right.</p> <p>The resale royalty rights will only apply after the commencement date of the Copyright Amendment Act.</p> <p><i>Pages 6-8 of the Bill.</i></p>

Proposed Amendments

Distribution, commercial renting, communication to the public and making available of an audiovisual work to the public

(Beijing Treaty)

What the Bill provides

Clause 8 of the Bill proposes an amendment to section 8 of the Act by providing for the distribution of an audiovisual work to the public, authorising commercial rental of the work to the public, communication to the public of an audiovisual work by wire or wireless means, including internet access and making available to the public a work in such a way that members of the public may access such work from a place and at a time individually chosen by them, whether interactively or non-interactively.

Pages 8-9 of the Bill.

Proposed Amendments

	What the Bill provides
Share in royalties regarding audiovisual works	<p>Clause 9 of the Bill inserts a new section 8A specifically providing for royalty sharing between performers and the copyright owner of audiovisual works for any of the acts contemplated in section 8. The share of royalties to be determined by a written agreement in a prescribed manner. It requires the recording and reporting of any act contemplated in section 8 and makes the failure to do so, an offence.</p> <p><i>Pages 10-11 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Royalties regarding sound recordings	<p>Clause 11 substitutes 9A that provides for the royalty that is equally shared between the owner of the copyright, collecting society or indigenous community subject to the agreement to the contrary between the owner and the performer.</p> <p><i>Page 11 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
<p data-bbox="50 221 929 587">Distribution, commercial rental, communication to the public and making available of a Sound Recording to the public (WIPO Performances and Phonograms Treaty)</p>	<p data-bbox="948 221 1854 1101">Clause 10 of the Bill proposes an amendment to section 9 of the Act providing for the distribution of a sound recording to the public, authorising commercial rental of the work to the public, communication to the public of such sound recording by wire or wireless means, including internet access and making available to the public a work in such a way that members of the public may access such work from a place and at a time individually chosen by them, whether interactively or non-interactively.</p> <p data-bbox="948 1117 1352 1165"><i>Page 10 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
The Agreement: section 6A, 7A, 8A (Share of royalties)	<p>The royalty will be provided in the written agreement in the prescribed manner and form. The agreement must include:</p> <ul style="list-style-type: none">– The rights and obligations of the contracting parties.– The share of royalties.– The method and period of payment.– Dispute resolution mechanism. <p>In the instance where there is no agreement, parties may approach the Copyright Tribunal.</p> <p>Pages 5, 6 and 9 of the Bill.</p>

Proposed Amendments

What the Bill provides

Retrospective application of royalties

Clause 5, Section 6A on share of royalties in literary and musical works, clause 7, section 7A on share of royalties in virtual artistic works and clause 9, section 8A of share of royalties in audiovisual works will apply retrospectively.

It applies to works in the copyright Act still exploited for profit.

The Minister must develop draft regulations setting out the process to give effect to the share of royalties. In section 6A(7)(b), 7A(7)(b), 8A(5)(b).

Conduct an impact assessment of the process proposed in the regulations contemplated.

Table the draft regulations and impact assessment in the National Assembly for approval.

This will apply after the commencement date contemplated in clause 38(2) of the Bill.

Pages 5-9 of the Bill.

Proposed Amendments

Clause	What the Bill provides
Recording and Reporting for royalty determination	<p>Clause 11 of the Bill proposes the substitution of section 9A of the Act. It requires the recording and reporting of any act contemplated in section 9(c), (d), (e) or (f) and makes the failure to do so, an offence. It also makes certain amendments related to the parties involved in determining the royalty amount, and for referral to the Tribunal.</p> <p>The offence provides that a person convicted of an offense shall be liable for a fine or imprisonment for a period not exceeding five years or both such fine and imprisonment.</p> <p>The annual turnover of a convicted person that is not a natural person at the time assessed, is the total income of that person during the financial year during which the offence or the majority of offenses, to which this Act applies.</p> <p><i>Pages 10-11 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
General Exceptions and specific exceptions regarding protection of copyright work; permission to make copies; Exceptions related to educational and academic activities	<p>Clause 13 of the Bill proposes the insertion of section 12A in the Act, providing for the general exceptions from copyright protection for all works, which is a hybrid model of use of work or the performance and includes factors to consider to ensure the usage of the works is fair; section 12B provides for specific exceptions from copyright protection for all works and section 12C is providing for the permission to make transient or incidental copies of a work, including reformatting, an integral and essential part of a technical process. It also proposes the insertion of section 12D providing for exceptions related to educational and academic activities. All these sections have safeguards on the use of copyright works.</p> <p><i>Pages 12-15 of the Bill.</i></p>
Freedom of Panorama	<p>Clause 14 of the Bill proposes an amendment to section 15 of the Act to provide for freedom of panorama and incidental use exceptions. <i>Page 15 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Exceptions regarding Computer Programs	<p>Clause 19 of the Bill proposes an amendment to section 19B of the Act by providing that the person having a right to use a copy of a computer program shall be entitled, without the authorisation of the copyright owner, to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program, if he or she does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he or she is entitled to do.</p> <p><i>Pages 15-16 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
General exceptions regarding protection of copyright works for libraries, archives, museums and galleries as well as for persons with disability	<p>Clause 20 of the Bill proposes the insertion of sections 19C and 19D into the Act by providing general exceptions regarding protection of copyright work for libraries, archives, museums and galleries, as well as exceptions regarding protection of copyright work for persons with disability.</p> <p><i>Pages 16-18 of the Bill.</i></p>
Moral Right	<p>Clause 21 of the Bill proposes an amendment to section 20 of the Act, thereby providing for an author to have the right to claim authorship of the work, and to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author despite the assignment of his work. The word transfer was changed to assignment in sound recording and audiovisual works, which replaced cinematograph film or a television broadcast.</p> <p>The clause further provides that the author shall be deemed to have the right to take legal action related to the infringement of the provisions of this section on moral rights.</p> <p><i>Pages 18 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Ownership of copyright in Commissioned Works	<p>Clause 22 of the Bill proposes an amendment to section 21 of the Act to provide for the ownership of any copyright subsisting in the work between the person commissioning the work and the author who executes the commission to be governed by written agreement. It further provides for the protection of the author by allowing an application to the Tribunal where the work is not used by the person who commissioned it for the purpose it was commissioned; where the work is used for the use other than that for which it was commissioned; when the commissioned work is of a personal nature, the Tribunal may not license the author to use that work. when considering the license when the work is not used by the person who commissioned, the Tribunal must take all relevant factors into account.</p> <p><i>Pages 18-19 of the Bill.</i></p>
Assignment of literary or musical work	<p>Clause 23 of the Bill proposes an amendment to section 22 of the Act by providing that copyright owned by, vesting in or under the custody of the State may not be assigned. It also provides a reversion right for where copyright in a literary or musical work was assigned by an author shall only be valid for a period of up to 25 years from the date of such assignment. Such a license can be verbal or in writing.</p> <p><i>Pages 19-20 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Licenses in respect of Orphan Works	<p>Clause 24 of the Bill proposes the insertion into the Act of a new section 22A, making provision for licences in respect of orphan works. The clause provides for orphan works for resale royalty rights.</p> <p><i>Pages 20-21 of the Bill.</i></p>
Accreditation, Administration and Regulation of Collecting Societies	<p>Clause 25 of the Bill proposes the insertion of a new Chapter 1A into the Act and provides for the accreditation that include the transformation requirements in the collecting society, administration and regulation of collecting societies. It also provides that where a person intentionally gives him or herself out as a collecting society, that person commits an offence. The Bill provides the transitional arrangement period of 18 months for the accreditation of cs. The collecting society can make royalty payments where there are reciprocal agreements with other collecting societies outside the Republic.</p> <p>The clause provides for the control of collecting society by authors, performers or copyright owners and the functions it will perform such as to collect and distribute royalties. It further provides for the suspension, cancellation of accreditation of collecting societies and the role of the Commission in that regard as well as the skills requirement of the person appointed by the Tribunal for the administration and discharging of the functions of the collecting society.</p> <p><i>Pages 21-24 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Copyright Management Information (CMI) (WCT, WPPT)	Clause 26 of the Bill proposes an amendment to section 23 of the Act by providing for an offence if a person tampers with information managing copyright or abuses copyright and technological protection measures. <i>Page 24 of the Bill.</i>
Technological Protection Measure (TPM) (WCT, WPPT)	Clause 27 of the Bill proposes an amendment to section 27 of the Act by inserting a new subsection, which provides for an offence if a person unlawfully circumvents technological protection measures applied by the author or copyright owner. It also provides for penalties where the convicted person is not a natural person. <i>Pages 24-25 of the Bill.</i>

Proposed Amendments

	What the Bill provides
Circumvention of TPM (WCT, WPPT)	<p>Clause 28 of the Bill proposes amendments to section 28 of the Act, which provides for the copying of a work to constitute an infringement of copyright, if such copying would have constituted infringement in the country in which the work was made.</p> <p><i>Pages 25-26 of the Bill.</i></p>
Prohibited conducted in terms of CMI and TPM (WCT, WPPT)	<p>Clause 29 of the Bill proposes the insertion of sections 28O, 28P, 28Q, 28R, and 28S in the Act providing for prohibited conduct in respect of technological protection measures and of copyright management information; exceptions in respect of technological protection measures and copyright management information; and enforcement by the Commission.</p> <p><i>Pages 26-27 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Copyright Tribunal	<p>Clauses 30 and 31 of the Bill amends section 29 and propose the insertion of sections 29A to 29H into the Act, which provide for, amongst others, the strengthening of the Copyright Tribunal; its functions; appointment of its members; term of office; removal and suspensions; and procedural matters on the conduct of hearings of the Tribunal.</p> <p><i>Pages 27-28 of the Bill.</i></p>
Regulations	<p>Clause 33 of the Bill proposes an amendment to section 39 of the Act by providing for ministerial powers to prescribe regulations relating amongst others to the procedure for the conduct of Tribunal hearings and relating to Collecting Societies, as well as prescribing minimum standards for contracts.</p> <p><i>Pages 30 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Unenforceable Contracts	<p>Clause 34 of the Bill proposes a new section 39B, and provides that a term in a contract that purports to prevent or restrict any act which by virtue of the Act would not infringe copyright or which purports to renounce a right or protection afforded by the Act will be unenforceable.</p> <p><i>Page 31 of the Bill.</i></p>
Schedule 2	<p>Clause 35 of the Bill proposes the insertion into the Act of a new Schedule 2, providing for “Translation Licences” and “Reproduction Licences”.</p> <p><i>Pages 31-35 of the Bill.</i></p>
‘Cinematograph Films’ and ‘Film’	<p>Clause 36 provides for the amendment of the expressions “cinematograph film” and “film” with “audiovisual work” and “work”.</p> <p><i>Page 35 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Transitional Provisions	Clause 37 provides for transitional provisions related to terms inserted in the Act by the Intellectual Property Laws Amendment Act, 2013 (Act No. 28 of 2013). <i>Page 35 of the Bill.</i>
Short Title and Commencement	Clause 38 of the Bill provides for the short title and commencement. <i>Page 36 of the Bill.</i>

ANNEX 2: PERFORMERS' PROTECTION AMENDMENT BILL PROVISIONS



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Proposed Amendments

Provisions	What the Bill provides
Definitions	<p>Clause 1 proposes the insertion of definitions of “audiovisual fixation”, “communication to the public”, “copyright management information”, “producer”, “sound recording”, “technologically protected work”, “technological protection measure”, “technological protection measure circumvention device” and “Tribunal”, the deletion of the definition of “cinematograph film”, “fixation”, “phonogram” and by the substitution for the definitions of “broadcast”, “performance”, “performer” and “reproduction”. <i>Pages 2-4 of the Bill.</i></p>
Protection of Performers’ moral and economic rights	<p>Clause 2 of the Bill proposes the substitution of section 3 of the principal Act. The primary objective of this clause is to clearly circumscribe the statutory rights conferred upon a performer, in particular certain exclusive rights in respect of his or her performances.</p> <p><i>Pages 4-5 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Transfer of Rights	<p>Clause 3 proposes the insertion of sections 3A and 3B to provide for the transfer of rights where the performer has consented to fixation of his or her performance in an audiovisual fixation or sound recordings, subject to written agreement which shall give the performer the right to receive royalties or equitable remuneration for any use of the performance. It is proposed that the exercise of this right in respect of sound recordings shall be valid for a period of 25 years from the date of commencement of the agreement and where after the rights reverts to the performer.</p> <p><i>Page 5 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
Protection of rights of producers of sound recordings (WPPT)	<p>Clause 3 also grants exclusive rights to the producer of a sound recording that include the rights to reproduce and making available to the public. The clause also provides the right to earn an equal remuneration, subject to the contract in the contrary, for the direct or indirect use of sound recording to the performer, composer and producer of sound recording published for commercial purposes for broadcasting or communication to the public.</p> <p><i>Pages 5 of the Bill.</i></p>
Restrictions on use of performance	<p>Clause 4 of the Bill proposes amendments to section 5 of the principal Act to provide for the consent of the performer for an unfixed performance or a performance fixed in an audiovisual fixation or sound recording. It provides for availability of the original and copies of performance fixed in audiovisual fixation to the public.</p> <p><i>Pages 5-8 of the Bill.</i></p>

Proposed Amendments

Issues introduced by the PPAB	What the Bill provides
Restrictions on use of performance	<p>Clause 4 also provides for persons who intend to broadcast or communicate to the public a performance fixed in audiovisual fixation or sound recording of a performer, to record certain acts and submit reports thereon. Failure to do so constitutes an offence. The clause further provides the penalties that include fine, imprisonment not exceeding five years, for a juristic person ten percent of annual turnover. The courts are granted discretionary powers to give a lesser sentence.</p> <p>The clause also provides for the performer to receive royalties or equitable remuneration for authorising the fixation of audiovisual fixation or sound recording for performing certain acts provided the agreement with the producer of the fixation.</p> <p><i>Pages 5-8 of the Bill.</i></p>
Nature of copyright in audiovisual works (Beijing Treaty, WPPT)	<p>Clause 5 of the Bill proposes amendments to section 8 of the principal Act and provides for situations where an audiovisual fixation or a sound recording can be used without consent for instances that include private study or personal and private use, criticism or review, or reporting on current events, teaching or for scientific research. The clause provides for the acts the broadcaster can perform without consent required in section 5, but where the performer has consented.</p> <p><i>Pages 8 of the Bill.</i></p>
Regulations	<p>Clause 6 of the Bill empowers the Minister to make regulations regarding compulsory and standard contractual terms as well as to provide guidelines to performers when granting consent.</p> <p><i>Page 9 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
<p>Technological Protection Measures (TPM) and Copyright Management Information (CMI) (WCT, WPPT, Beijing Treaty)</p>	<p>Clauses 7 and 8 of the Bill proposes the insertion of sections 8E, 8F, 8G and 8H to provide for the prohibited conduct in relation to a Technological Protection Measures, which is aligned with sections 28O and 28P of the Copyright Act, 1978, to apply in respect of performances fixed or fixed in audiovisual fixations; and provide for the prohibited conduct in relation to the removal or modification of copyright management information; and the exceptions relating to such removal or modification, which is aligned with sections 28Q and 28R of the Copyright Act, 1978, to be applicable in respect of performances that are fixed or fixed in audiovisual fixation. The Bill in clause 8 makes it an offence to contravene these prohibitions and provides for a sanction.</p> <p><i>Pages 9-11 of the Bill.</i></p>

Proposed Amendments

	What the Bill provides
'Phonogram' and 'Fixation' Expressions	Clause 9 substitutes the expressions "phonogram" to sound recording and "fixation" to a sound recording wherever they appear in the Act. <i>Page 11 of the Bill.</i>
Transitional Provisions	Clause 10 provides for transitional provisions. <i>Pages 11-12 of the Bill.</i>
Short title and Commencement	Clause 11 provides for the short title of the Bill and commencement. <i>Page 12 of the Bill.</i>

Thank you



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