



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

The Copyright Amendment Bill

**Presentation to the Select Committee on Trade
and International Relations
06 March 2019
Parliament - CAPE TOWN**



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Purpose

The purpose of this presentation is to brief the Select Committee on Trade and International Relations on the dti responses to the written submissions received from various stakeholders on Copyright Amendment Bill



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Contents

- **Written Submissions on Copyright Amendment Bill:**
 - Background
 - Consultations on the Bill
 - Tagging of the Bill
 - Impact Assessment on the Bill
 - Definitions
 - Reversionary clause – 25 years period
 - Orphan works
 - Penalty on failure to report use of the works
 - Retrospective application of the Act
 - Fair Use provisions
 - Contractual Freedom
 - Constitutional Compliance
 - Commissioned Works
 - Sections 6A and 8A
 - Violation of WIPO Treaties
 - One Collecting Society per right
 - Digitization
 - General comments
 - Conclusion



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Background

- The Select Committee on Trade and International Relations invited the public to make submissions on the Copyright Amendment Bill.
- Some stakeholders commented on the older versions of the Bill and made reference to sections no longer applicable.
- Responses are only directed to the content of the Bill except where clarity can be provided.
- Some stakeholders raised similar issues raised before in the PC.
- The submissions are analysed in themes. Stakeholders raised similar concerns and even if the stakeholder name is not listed in some instance, the theme would address their concerns. The submissions were considered.



Consultations on the Bill

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none"> ▪ South African Guild of Actors (SAGA) ▪ European union delegation to SA ▪ International Federation of Film Producers Association ▪ Sarah ▪ Pen Afrikaans ▪ Denise R. Nicholson 	<ul style="list-style-type: none"> ▪ The length of time granted for public comments to the Committee regarding CAB is insufficient to allow for the requisite depth in addressing the many issues that the CAB in its current iteration contains. ▪ Bill to be substantially redrafted. ▪ Sufficient time to be given for redrafting. ▪ Request that more time is given for industry players to critique it and give input. This Bill is set to go through so quickly with so little time for the public to engage with the content and comment in a meaningful way. ▪ Opposed to the procedure through which the Bill is being railroaded through Parliament. ▪ Commends the dti and the Portfolio Committee on Trade and Industry and now the Select Committee of the National Council of Provinces for affording all stakeholders such a lengthy and wide consultation process with meetings, workshops, a large conference in 2015 and many calls for submissions on the Bill. ▪ All stakeholders were given ample time and opportunities to engage and submit comments during the course of the past 3 ½ years and present at public hearings in Parliament in August 2017. 	<p>There has been consultations on the Bill before it came to Parliament, after introduction to Parliament and in the Portfolio Committee on Trade and Industry and now in the Select Committee. The Copyright legislation caters for many stakeholders and role players in the copyright based industries. The consultations may never be exhausted and never enough. It is a balancing act for government that is difficult to strike. Much work has gone into the Bill, over a longer duration of time.</p>



Consultations on the Bill

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none"> ▪ National Association of Broadcasters (NAB), Scientific Technical Medical Publishers (STM), DALRO ▪ Sarah, Thandi Nkosi, Animation South Africa, NYCT Films; Petition with 403 signatories ▪ Jacaranda FM, East Coast Radio ▪ Frieda Wade, Panavision, IFRRO), NBC Universal ▪ Universities South Africa, Electronic Information for Libraries ▪ Library and Information Association of South Africa (LIASA) ▪ MNET and Multichoice ▪ South African Copyright Alliance 	<ul style="list-style-type: none"> ▪ Extensive work is therefore required to revise the Copyright Bill, to address its many issues. NAB believes that the Copyright Bill should be sent back to the National Assembly to review. ▪ Requests for the Bill be suspended. ▪ CAB has far reaching implications for the media sector. Request extension of the deadline. ▪ More time required to address issues in the Bill. ▪ USAf hopes that the Bill will be approved by the NCOP as soon as possible and sent for signature to President Ramaphosa before the May elections. ▪ EIFL wishes to express its strong support for the Bill and urges the NCOP to support its timely adoption. ▪ LIASA accepts that no piece of legislation is perfect and that there are still issues that need to be addressed such as online contracts but we believe those can be dealt with in a brief amendment in the future. ▪ The Committee should conduct a further round of oral hearings. ▪ SACA would like to extend an invitation to the Select Committee to a workshop aimed at showcasing the practical management and application of copyright and laws on a day to day basis. 	<ul style="list-style-type: none"> ▪ The introduced Bill was redrafted and revised several times to date. The Bill has been updated several times with the Portfolio Committee advertising new sections from time to time. The law is outdated and the proposed changes will reform the copyright regime in South Africa. With many copyright based industries affected, to have 100% acceptance and buy-in by all concerned may not be possible. ▪ Suspending a Bill as critical as this; with an outdated legislation and not addressing the protection and rights of authors, performers and copyright owners, may not be in the broader public interest.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Tagging of the Bill

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">RISA, Advocate Steven Budlender and Advocate Ingrid Cloete	<ul style="list-style-type: none">Incorrect tagging of the Bills as section 75 may make them liable to be set aside as constitutionally invalid.The Bill has been incorrectly tagged as a section 75 Bill.	<p>The tagging of the Bill is done by the Joint Tagging Mechanism - JTM in Parliament.</p> <p>They can advise regarding the tagging. the dti is of the view that the process must proceed with the Bill tagged as it is.</p>



Impact Assessment Study

Impact Study Analysis: The Bill

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ Netflix▪ International Federation of Film Producers Association, International Publishers Association (IPA), H S R C P r e s s , Independent Black Filmmakers Collective▪ Cliffe Dekker Hofmeyr on behalf of Moonlighting Films Proprietary Limited	<ul style="list-style-type: none">▪ Raised whether impact study was conducted▪ Impact study is not done to gauge the impact of the Bill.▪ Impact assessment be considered.	<ul style="list-style-type: none">▪ Various studies were conducted on both Bills as well as policy positions underpinning the amendment to the legislation as early as 2009.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Definitions

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">Library and Information Association of SAUniversities South AfricaMedia Monitoring AfricaDenise R. Nicholson	<ul style="list-style-type: none">Digitalization is not defined or mentioned in the Bill while it serves as important preservation in the online environment and digital media	<ul style="list-style-type: none">The Bill addresses the digital environment through the provisions informed by the internet Treaties. It is not necessary to define digitization in the Bill. This can be considered in future.
<ul style="list-style-type: none">Netflix	<ul style="list-style-type: none">Overlapping terms and definitions of audio visual works and cinematograph filmThe use of audio visual fixation and fixation in both Bills (Copyright Bill and Performers Protection Bill)	<ul style="list-style-type: none">Cinematograph Film has been replaced with Audio Visual work throughout the Bill.
<ul style="list-style-type: none">Netflix	<ul style="list-style-type: none">Technological Protection and Technological Protection Measure Circumvention insufficiently defined are insufficient to meet the requirements of Article 15 of WCT, Article 18 of WPPT and Article 15 of the Beijing Treaty, which all require adequate legal protection.	<ul style="list-style-type: none">Fixation is not only applicable in audio visual works, it can also apply in sound recordings.Technological Protection Measures and Technological Protection Measure Device is defined as per WIPO Treaties and is sufficient.
<ul style="list-style-type: none">Andre Myburgh		



Reversionary Clause

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ RISA▪ International Federation of Film Producers Association▪ Innovus▪ ETV▪ Andre Myburgh	<ul style="list-style-type: none">▪ Reversionary Clause of 25 years creates confusing and conflicts with exclusive rights of producers under section 9 of CAB▪ Recommends the deletion of Reversionary Clause of 25 years▪ Reversionary Clause creates massive business risks for all SA businesses▪ Reversionary Clause creates limitations to assignment and there is no policy rationale for its introduction▪ The 25 year limit on assignment of copyright in literary works is not a true reversionary right, as stated in the Memorandum of Objects but it is attached to the Copyright Act's provisions relating to the formalities for deeds of assignment and exclusive licenses. No substantive provisions that govern the intended reversion of rights.	<ul style="list-style-type: none">• Reversion clauses are not new to legal frameworks whether in the USA or the UK for different type of works.• The Bill limits the assignment to these works as a result of public comment and address the concerns of assignment as raised by the Copyright Review Commission (CRC).• Reference to the memorandum of object not clear in this context, could not establish the challenge on this version of the Bill. The memo will not form part of the Act. The reversion will be governed through an agreement.



Orphan Works

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ Cultural and Creative Industries Federation of SA▪ Library and Information Association of SA	<ul style="list-style-type: none">▪ Not clear what happens after 5 years. Royalties or license fees accruing from commercial exploitation of orphan works must be reinvested into funeral and pension schemes as well as in development and growth of the creative industries.▪ The provisions on orphan works are impractical in the Bill.	<ul style="list-style-type: none">• After 5 years where the collecting society is unable to distribute the royalties; the collecting society shall invest that money in an interest bearing account with a financial institution. The other implementation matters to be addressed outside the Bill.• Section 22A of the Bill provides a process for orphan works and it shows a step by step process. Furthermore, the Regulations as subsidiary legislation will provide more practical aspects to orphan works.



Penalty - non reporting

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ National Association of Broadcasters▪ N.A Matzukis (Advocate of the High Court of South Africa)	<ul style="list-style-type: none">▪ It is submitted that the penalty for not reporting on the use of works should be proportionate to the severity of the non reporting▪ Welcome the criminalization of failure to report music usage which is without doubt, one of the greatest challenges currently facing the music industry.	<ul style="list-style-type: none">▪ Usage of the fixated performances is a commercial activity that is exploited by copyright owners. When the performance is used in any platform the performer must also be remunerated. The lack of information has proven to be a major issue when it comes to payments of royalties in the music industry. The lack of this information and non payment of royalties is a serious concern.



Retrospective Application

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ Cliffe Dekker and Hofmeyer (Moonlighting Films Proprietary Ltd)▪ INNOVUS▪ Independent Black Film Makers Collective▪ Adv Nick Matzukis▪ Independent Producers Association, Kagiso media▪ DALRO▪ ETV, PASA	<ul style="list-style-type: none">▪ The retrospective provisions are unconstitutional unless they have undergone judicial review. These provisions will create uncertainty for rights acquired at the time of the previous law – hence impractical and impossible. Retrospective nature of the Bill be removed.▪ Retrospective provisions create massive business risk to SA businesses and will attract disastrous legal action.▪ No legislation of this nature must be retrospective as it will cause havoc to existing relationships duly concluded.▪ These provisions are arbitrary deprivation of property and therefore unconstitutional.▪ Retrospective provisions are unconstitutional and cannot be supported▪ Retrospective provisions are unconstitutional in particular Sections 6A, 7A and 8A.	<ul style="list-style-type: none">▪ The Parliamentary process of the Bill addressed issues of constitutionality. The Bill has been tightened with a process to address uncertainties concerning retrospectivity provisions. Retrospectivity if it meets certain conditions, is not unconstitutional. That part of the Bill will only be proclaimed once an impact assessment and regulations have been concluded and tabled in the National Assembly.



Fair Use Provisions

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none"> ▪ Pen Afrikaans, Universities SA ▪ UCT School of African & Gender Studies, Anthropology and Linguistics ▪ International Publishers Association ▪ Kagiso Media ▪ Marcus Low ▪ HSRC Press ▪ UCT Intellectual Property Unit (IPU) 	<ul style="list-style-type: none"> ▪ The introduction of fair use is a concern. ▪ Fair Use overrides exceptions and broadens fair use to copying for course packs and any other educational purpose. ▪ Fair use potentially not protecting domestic authors. ▪ Fair use will undermine the entire copyright markets ▪ Fair use will lead to substantial loss of income to authors, book publishers and entire publishing value chain. ▪ The Committee is urged to disregard alarmist assertion by special interest groups that the proposed framework will harm copyright holders. It should be considered that countries with flexible fair use provisions in law, such as the United States have thriving creative industries. ▪ Impacts on the exclusive rights of performers and copyright owners. ▪ Concern with expanding current fair dealing exceptions and limitations to overly broad fair use exceptions with no clear legal precedents. ▪ Introducing a fair use provision and some of the other proposed copyright exceptions will be in violation of South Africa's obligations under the TRIPS agreement. 	<ul style="list-style-type: none"> ▪ Introduction of a hybrid Fair use provisions is a policy position of the dti and it is addressing socio economic challenges of a developmental state of SA. ▪ Fair use is not foreign to SA, other jurisdictions have introduced it. The provisions of fair use have safeguards. ▪ Countries that apply fair use tend to be more innovative and with a growing creative industry. ▪ Other stakeholders supported the fair use provisions (Universities South Africa, Marcus Low, Library and Information Association of South Africa, WikiMedia ZA, American University Washington (College of Law), IFLA, Dennis Nicholson, Right2Know Campaign (R2K). ▪ There are several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.



Contractual Freedom

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ Netflix▪ RiSA	<ul style="list-style-type: none">▪ The provisions of the Bills interfere with freedom to contract and they amount to deprivation of property and violates section 22 of the Constitution▪ The powers of the Minister to prescribe compulsory and standard terms constitutes undue regulatory intervention and violates freedom of the parties to contract	<ul style="list-style-type: none">▪ The Minister's powers are only prescribing minimum requirements and not the whole contractual arrangement, therefore parties are still at freedom to include other terms.▪ Providing guidance to contacting parties is to empower them to be able to know how to negotiate the terms in the contract.



Constitutional Compliance

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ Netflix, Pen Afrikaans, IFPI▪ PASA, Cliffe Dekker and Hofmeyr, MNET and Multichoice▪ Motion Pictures Association (MPA)	<ul style="list-style-type: none">▪ Many proposed provisions in the Copyright Bill give rise to constitutional concerns which should be resolved prior to adoption and final implementation. No clear policy analysis underpinning the changes made, the Bill is vulnerable to being challenged for the inclusion of arbitrary and constitutionally unjustifiable provisions.▪ Contravention of the Constitution section 25(1) as the provisions amount to deprivation of property due to unjustifiably interfering with the right to freedom of trade.▪ Constitutionality concerns on the retrospective provisions.▪ There are serious questions about legal certainty, practicality, constitutionality and international treaty compliance.	<ul style="list-style-type: none">▪ The Constitutional aspects of the Bills have been checked through the legal process of Parliament as custodians of the Bills, also before the Bills were introduced into Parliament Constitutionality was checked by the State Law Advisors.▪ The process was added in the Bill on retrospectivity to address constitutional concerns.



Commissioned Works

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ Netflix▪ Associate Professor Sunelle Geyser – Unisa▪ ETV▪ IPO	<ul style="list-style-type: none">▪ Change of provisions relating to commissioned works will lead to legal uncertainty and to disputes including costly and time consuming litigation▪ The inclusion of agreement in the provisions dealing with commissioned works is not necessary▪ The provisions on commissioned works are vague and uncertain.▪ Section 21(c) still does not create a default ownership in the work by its author.	<ul style="list-style-type: none">▪ The legislative intervention was to ensure that agreement is concluded in the commissioned works to create legal certainty.▪ Parties to a commissioned works will be encouraged to conclude agreements to create certainty on ownership of the copyright.▪ The provisions give clarity.▪ The other changes give more rights to the author to the copyright, when the work is used other than original purpose, etc.



Sections 6A and 8A

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ Netflix, MNET and Multichoice	<ul style="list-style-type: none">▪ The new sections 6A and 8A of the Copyright Bill would severely erode the rights of producers in that authors or performers who had previously divested their rights in a literary, musical or audiovisual work will now be entitled to claim the payment of a royalty in respect of any of the acts set out in sections 6 or 8 of the Copyright Act.• A further difficulty with the provisions of sections 6A and 8A of the Copyright Bill is that they do not allow for any flexibility in respect of the choice of the remuneration model as the sections only contemplate the payment of a percentage of royalties.	<ul style="list-style-type: none">• This is a policy decision taken. Royalty is payable even though there was assignment.• The issue of different payment models is taken into account. The agreement can address that issue.



WIPO Treaties

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">Netflix	<ul style="list-style-type: none">The Copyright Bill incorporate various provisions of the WIPO Performances and Phonograms Treaty ("WPPT"), the WIPO Copyright Treaty ("WCT") and the Beijing Treaty on Audiovisual Performances ("Beijing Treaty") without Parliament ratifying all international treaties. However, there has been no review of the treaties by the Department of Justice and Constitutional Development ("DOJACD"), the Department of International Relations and Cooperation ("DIRCO"), the Department of Trade and Industry ("dti") and Parliament which are all necessary steps for ratification.The non-alignment of section 8A with the Beijing Treaty results in a failure to strike an equitable balance between the rights of performers on the one hand and the rights of copyright owners on the other and this should be remedied by amending section 8A to provide that a royalty or equitable remuneration will only be payable to a performer in relation to "making available", "broadcasting" and "communication to the public" and that such remuneration may be fulfilled by means residual (royalty payments) pursuant to a CBA.	<ul style="list-style-type: none">The processes were followed and the Treaties are in the Parliamentary process.There is alignment between the Beijing Treaty and section 8A. South Africa has a developmental context that must be taken into account.



WIPO Treaties

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none"> ▪ Risa ▪ Andre Myburgh 	<ul style="list-style-type: none"> ▪ SA Copyright law will not be aligned with the international copyright treaties. ▪ Deficiencies related to the exceptions and protection of technological protection measures and copyright management were not adopted leaving WCT and the WPPT. ▪ There is no indication that either the dti or the Portfolio Committee took the Three-Step Test into account in developing and adapting the 'fair use' provision in the new Section 12A and the new copyright exceptions in Sections 12B, 12C(b), 12D, 19B and 19C. ▪ The consequences of the obligations under National Treatment, to which South Africa is bound under the Berne Convention and TRIPs, and which also appear in WCT, WPPT and the Beijing Treaty, do not seem to have been considered in devising Sections 6A, 7A and 8A or their predecessors in the Original Bill. ▪ Section 19D does not include any of the content required by Article 4 of the Marrakesh VIP Treaty, since the right to make accessible format copies for persons with a disability is open to "any person or organisation serving the disabled", whereas the treaty limits that act to "authorized entities" and "a primary caretaker or caregiver" acting on behalf of a Beneficiary, in terms of Article 4. 	<ul style="list-style-type: none"> ▪ The Treaties were taken into account and there is alignment. In some instances, consideration were made to the South African situation. ▪ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. ▪ Furthermore, more safeguards were added to the Bill. ▪ Although South Africa is guided by the international Treaties, it still has to consider issues in the public interest. Section 6A, 7A and 8A addresses longstanding injustices affecting the creative industry. ▪ Section 19D provides that the person can be prescribed, the Bill was updated and the authorization will be provided for in the regulations.



One Collecting Society Per Right

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">Simon Pienaar	<ul style="list-style-type: none">The summary of the proposed amendments on the Committee Notice Details require further elaboration, there is no indication of whether they will be positive or negative effects. Who will these amendments serve? Some seem redundant, for example, SAMRO is already accredited, what further accreditation will serve their mission?Prevent SAMRO and similar institutions from being used as slush funds first.	<ul style="list-style-type: none">Not all collecting societies are accredited. The regulatory framework needed to be strengthened.Collecting societies not accredited will be given time to be accredited. The Bill provided for 18 months for the transition.It will be a criminal offense to operate as a collecting society without being accredited.



One Collecting Society

One Collecting Society Per Right:

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">▪ IMPRA▪ South African Guild of Actors▪ The Cultural and Creative Industries Federation of South Africa (CCIFSA)	<ul style="list-style-type: none">▪ One collecting society per right is objected to, although no reason is provided.▪ The definition of collecting society to include that a collecting society may only be accredited to manage one category of right holder.▪ CCIFSA is aware of the DTI's proposal on one collecting society per right. CCFISA don't subscribe to one collecting society per right in a developmental state. DTI is urged to take counsel on this issue.	<ul style="list-style-type: none">▪ The Bill no longer provides for one collecting society per right. It was in the previous versions of the Bill before adoption by the PC.



Digitization

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">Universities of South AfricaAndre MyburghUCT Intellectual Property Unit (IPU)Caroline Ncube (DST/NRF SARChI; Chair: Intellectual Property, Innovation and Development.	<ul style="list-style-type: none">Digitisation should be mentioned in the provisions for libraries, archives, etc. relating to preservation and online accessibility. Recommends that specific amendment to copyright law be considered in 2020 to address the relevant digital issues.Warns against too restrictive Digital Rights Management Technological measures which restricts access to information.Text and data mining is very important for research and other forms of knowledge production but is not addressed in the Bill.The Committee and the dti to take cognizance of copyright development in the EU on online issues.Computer programmes require digital rights.The Bill does not sufficiently address digital issues including online licensing, safe harbours.The Copyright Amendment Bill does not have to contain safe harbor provisions as these are already in the ECTA, albeit requiring some revision.	<ul style="list-style-type: none">The Bill has elements of digitization from the W P P T, W C T Treaties.Digitisation can be considered in future more extensively.The exceptions on c o m p u t e r programmes are provided for. Point about digital rights noted.



General comments

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none"> ▪ RISA ▪ Scientific Technical and Medical Publishers-STM ▪ ANFASA • N.A Matzukis (Advocate of the High Court of South Africa) ▪ International Federation of Film Producers Association, Innovus ▪ Associate Professor Sunelle Geyer-Unisa ▪ Dennis Nicholson 	<ul style="list-style-type: none"> ▪ Recommend deletion of section 12A ▪ Section 12D(7) should be withdrawn from the B-Bill. ▪ Section 6A should be deleted in its entirety. ▪ Literary works be excluded from section 6A ▪ Recommends the deletion of section 39B ▪ Recommends that section 1(i)(b) make clear that the intention of the provision is to ensure accurate reporting by licensed users. ▪ Clause 5: s6A(4)(b) refers to 'the royalty percentage agreed on, or ordered by the Tribunal, as the case may be'. It should refer, more specifically, to the various royalties that might be attracted by the different rights bundled into Copyright. ▪ Exception 12B(2)(c) should be removed. ▪ Proposed quotation exception in section 12B(1). ▪ Section 22(b)(3) should be deleted-clause on 25 year term limit on any assignment. ▪ Local organization not defined. ▪ The Bill makes reference to two pieces of legislation which have not yet been proclaimed, namely, the Copyright Amendment Act 66 of 1983 and Intellectual Property Laws Amendment Act 28 of 2013 (DTI). 	<ul style="list-style-type: none"> ▪ The sections proposed to be removed were subject to policy debates. They have safeguards and were verified by panel of experts. ▪ Local organization will be clarified in the regulations. Minister will prescribe. ▪ I P L A A will be operationalized. For now, part of transitional provisions.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

General comments

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none">Independent Producers Organisation (IPO)	<ul style="list-style-type: none">The section on unenforceable contractual term creates an unacceptable limitation on freedom of contract and prevents producers from contracting with actors, writers to find a deal that works for all the parties. It would turn the right to royalties in into an unwaivable and perpetual right.	<ul style="list-style-type: none">This clause protects a vulnerable party who contracted him or herself out of the rights afforded by the Act by allowing that vulnerable party to say – “This is an unenforceable term so I remain protected”.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Conclusion

- Most of the inputs were policy concerns and comments without proposals.
- Some suggestions made on provisions contradict the policy positions on the provisions and others are implementation related.
- Many submissions were critiques of the Bill with a view to ensure the process is suspended.
- It is requested that the Select Committee on Trade and International Relations notes the submissions from the stakeholders whom we thank for the contributions and to request the Select Committee to note **the dti** responses.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Thank You