



the dti

Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA

## Responses for the Copyright Amendment Bill [B13-2017]

During the month of May and June 2018 the Portfolio Committee on Trade and Industry embarked on deliberations on the Copyright Amendment Bill (CAB). The deliberations resulted in the below mentioned clauses being published for public comment. The CAB in its entirety was deliberated on. The CAB was published in July 2018 for wider public consultation.

The below summary captures the comments as per the published issues and important technical issues were captured where these issues would improve the CAB. The Memorandum of Objects was used by many stakeholders to open up discussion on the exceptions and limitations (not a published matter) contained in the CAB as deliberated upon.

The spirit of the CAB is still and always will be the upliftment of the creative industry and the updating of the legislation to take cognizance of the digital economy. Certain issues were raised that were not included in any reiteration of the CAB such as online piracy. Further there was a strong call for the reintroduction of the One Collecting Society per set of rights principle and the exception for Computer Programmes.

Below follows our summary of the comments.

### The Copyright Amendment Bill issues for publication were as follows:

- **Clause 1, par (i):** The definition of “visual artistic work”.
- **Clause 5:** Section 6A(4): The minimum content of the agreement related to royalty percentages.
- **Clause 5:** Section 6A(5): The issue of retrospective application .
- **Clause 7:** Section 7A(4): The minimum content of the agreement related to royalty percentages.
- **Clause 7:** Section 7A(5): The issue of retrospective application.
- **Clause 7:** Section 7B(3)(a)(i) read with section 7B(5): Reciprocal application of the resale royalty right.
- **Clause 7:** Section 7B(6): Retrospective application of an artist’s resale right.
- **Clause 9:** Section 8A(4): The minimum content of the agreement related to royalty percentages.
- **Clause 9:** Section 8A(5): The issue of retrospective application.
- **Clause 11:** Section 9A(1)(aA): Log Sheets.
- **Clause 11:** Section 9A(4): Failure to record acts or to report constituting an offence and the penalty for that offence.
- **Clause 12:** Section 11 - Nature of copyright in programme-carrying signals.
- **Clause 15:** Section 15: Panorama rights and incidental use.

- **Clause 22:** Section 21(3): New process for commissioned work aimed at giving the author more rights.
- **Clause 25:** Section 22B(7): Transitional provisions to provide for existing Collecting Societies.
- **Clause 25:** Section 22C(3)(c): Reciprocity applying to pay-outs of royalties by Collecting Societies to foreign countries.
- **Clause 25:** Section 22D(2)(b) and 22D(3): How Collecting Societies should pay royalties out and what to do with funds if they cannot find the copyright owner or performer.
- **Clause 27:** Section 27(6): Increased penalties for infringement. Provision for fines when the convicted person is not a natural person.
- **Clauses 29 and 30:** Copyright Tribunal:
  - Section 29: Composition.
  - Section 29A(3): No power to review administrative action by the Commission.
  - Section 29E: Proceedings of the Tribunal.
- **Clause 37:** Transitional provision.

## 2. Summary of core issues (List is not exhaustive):

- **Retrospective application of certain clauses-** Although the majority of stakeholders are no in support of clauses having retrospective application it must be noted that Professor Tana Pistorius indicated that retrospectivity is not per se unconstitutional as retrospective legislation must pass the rationality test and the statutory standard of reasonableness.
- **Cooling off period-** Many stakeholders sought clarity on the intention of the cooling off period: a cooling-off provision generally refers to a period of time within which a person (usually a consumer) may decide to cancel a contract. Recommendations were made to introduce a period of when the cooling period will be applicable 5 or 7 days for example. Literary works are excluded from a cooling off period in terms of the Electronic and Communications Transaction Act.
- **Lack of Civil Remedies-** The legislation does contain civil remedies which are currently not being exercised by copyright owners, the intention of the Bill is not exclude civil remedies. It should be noted that the Copyright Tribunal as amended in the Bill is a civil tribunal.
- **Resale Royalty Right-**Clarity sought on who will be required to pay the royalty and that the definition introduced in Clause 1 was seen as too broad by some stakeholders and limiting by other, Spoor and Fischer noted that there is no problem with the definition of visual artistic works but recommended that may be simpler merely to refer to the works identified in sub-section (a) of the definition of "artistic work".
- **Penalties-**Overall sentiment was that the penalties introduced are drastic.
- **Commissioned works-** The submissions were split as some stakeholders felt the position of the Principal Act should be retained and others that ownership should revert to the creator of the work. The National Association of Broadcaster recommended that copyright owners should be given at least 7yrs to exploit the work. Purpose of the commissioned work should be defined.
- **Removal of exception for computer programmes-** There was a call for reintroduction of the exception as appeared in the 2017 Bill.
- **One Collecting Society per set of Rights-** There was a strong call for the reintroduction of this CRC recommendation due to practical implications.

## 3. List of stakeholders

The following stakeholders made additional written submissions on the Bill:



1. Adams and Adams/Strauss and Co
2. Anton Mostert of IP (Prof. Karjiker)
3. Advocate Matzukis
4. Copyright Alliance
5. ANFASA
6. Australian Digital Alliance
7. Board of Healthcare Funders of Southern Africa
8. BVPG Attorneys
9. CAPASSO
10. DALRO
11. European Visual Artists
12. FIAPF
13. IBFC
14. Innovus
15. Media Monitoring Africa (MMA)
16. National Inquiry Service Centre
17. Denise Nicholson
18. Fees must Fall Movement
19. Google South Africa
20. Graeme Gilfilian
21. International Federation of Library Associations and Institutions (IFLA)
22. IFFRO
23. International Intellectual Property Alliance(IIPA)
24. Independent Producers Organisation
25. International Publishers Association
26. Kagiso Media House
27. Law Society of South Africa
28. Library and Information Association of South Africa(LIASA)
29. National Association of Broadcasters (NAB)
30. MNet and Multichoice
31. National Clothing Retail Federation of South Africa (NCRF)
32. Publishers Association of South Africa (PASA)
33. PEN Afrikaans
34. Personal Managers' Association(PMA)
35. Priya Hollis

36. Right to Knowledge
37. ReCreateZA
38. RISA
39. South African Guild of Actors (SAGA)
40. South African Guild of Editors (SAGE)
41. South African Institute of Intellectual Property Law (SAIPL)
42. South African Library for the Blind
43. SAMPRA
44. SAMRO
45. SASFED
46. SASOL
47. Global Expert Network on Copyright User Rights Creative Commons Corporation (Sean Flynn)
48. Spoor and Fischer
49. STM
50. Tape Aids for the Blind
51. The Author
52. UNISA-Professor Tana Pistorious
53. Universities SA
54. US Chamber of Commerce
55. VANSAs
56. Walker Scott
57. WITS Digital Arts

#### 4. Specific comments/Questions Raised by Stakeholders

Name of the Stakeholder	Comment/Question	Response by the dti and CIPC
Adams and Adams/Strauss and Co	<ul style="list-style-type: none"> <li>• Clause 1 definition of visual artistic Work- Concerned over the broadness of the definition as it might extend to jewellery etc. which could qualify as a design. Recommendation that the definition be reviewed and corrected.</li> <li>• Clause 7-May be unenforceable as the South African Copyright Act would be regulating transactions that are not subject to South African law.</li> <li>• Incorrect reference made to Section 9 as a</li> </ul>	<ul style="list-style-type: none"> <li>• The comments have been noted. The definition expressly excludes industrial designs of which jewellery is part of.</li> <li>• The reciprocity of the clause will be done through arrangement between countries who have adopted this right which is internationally under discussion at WIPO as many jurisdictions have adopted this right.</li> <li>• Incorrect reference to S9 is noted and will be rectified.</li> </ul>



	<p>trigger to activate the Resale Royalty.</p> <ul style="list-style-type: none"> <li>• Minister must be able to increase or decrease the royalty depending on circumstances therefore rather use the word amend the royalty.</li> <li>• This clause should be reconsidered.</li> <li>• Clause 7-provision should be expanded to so that the resale royalty will only be applicable to transactions effected after the commencement of the Act or work that was made before the commencement of the Act but the application limited to resale transaction concluded after the commencement of the Act.</li> </ul>	
Anton Mostert Chair of IP (Prof. Karjiker)	<ul style="list-style-type: none"> <li>• The period to comment was insufficient to provide well considered submissions.</li> <li>• The incorporation of fair use in the Bill is evidence of lobbying by companies like Google.</li> <li>• IPLAA which is not in operation will do untold damage to SA Intellectual Property laws and it is also evidence of SA Government working in silos. Also, the Act makes no reference to indigenous communities and the reference should be deleted.</li> <li>• Clause 1: It would appear that the purpose of this definition is to make a distinction between aesthetic (and actual, first artwork) and functional works. Such a distinction is made in the Designs Act and functions effectively.</li> <li>• The terms 'original' and 'commercialised' are inappropriate and ineffective to make this distinction. All works must be 'original' in order to qualify for copyright, and the use of the term in this context is both confusing and ineffective. 'Commercialised' is also an entirely inappropriate term to use in this context.</li> </ul>	<ul style="list-style-type: none"> <li>• The comments have been noted.</li> <li>• Section 15(3) of the Principle Act is clear that artistic works shall not be infringed when it is included or reproduced in a film, broadcast if such work is permanently situated in a street/square or public place and there is no correlation to the definition.</li> <li>• Comment on Clause 11 relating to the performer may be adjusted as recommended.</li> <li>• Fines should be applicable to all persons.</li> <li>• The Bill is clear and the provisions of Clause 29 and Section 28R and 28S are linked.</li> </ul>

- The proposed new sections 12A and 12B do not comply with Berne Convention and TRIPS requirement and therefore unconstitutional in terms section 231 of Constitution.
- Clause 1, the definition relates to RRR and does not address challenges with section 15(3) of the principal Act.
- Clause 5, section 6A creates a compulsory license and it is inappropriate to deal with licenses in a section that deals with rights constituting copyright in a work. It also encroaches on freedom of contract and it should be deleted. The retrospective effect of this clause regarding royalties is preposterous.
- Clause 7, comments in clause 5 regarding royalties apply. RRR is not a copyright matter and should not be in the Copyright Act. In section 7B (3), the author or his or her heirs should receive royalties. There is no justification why the term of RRR should be shorter than the term of copyright protection.
- Suggested the insertion of the words 'Or designated country?'
- Clause 7B, Why not "adjust"? Why is it restricted to increases? The Minister may wish to "zero-rate" it in the future.
- Clause 7B (3) (b), Suggest to add designated country.
- If the resale royalty right were to outlast the copyright term this would be in conflict with section 7B(1);
- Clause 9, comments in clause 5 regarding royalties apply.
- Clause 11, in order to avoid confusion the words "whose performance is featured on the sound recording" should be added after the



	<p>word “performer”.</p> <ul style="list-style-type: none"><li>• The provisions regarding fines for non-compliance are unduly draconian and should not apply to private persons but radio stations and the like.</li><li>• It is not clear what would be covered by the highlighted portion, ‘under all transactions to which this Act applies’.</li><li>• Clause 22, this provision should be simplified by incorporating the provisions of (b) into 21(c) and leaving the rest for parties to determine by contract.</li><li>• The paragraph is in the circumstances erroneous in saying that it is the copyright owner who should pay the royalties (the author is in these circumstances the copyright owner). The reference to ‘copyright owner’ should be replaced by ‘commissioner’.</li><li>• Clause 25, there is no provision for the Companies Commission in the Bill or Act. it should be properly introduced and the term should be defined.</li><li>• Clause 27, strong copyright protection is welcomed. The fines imposed on juristic persons are draconian and are minimum penalties.</li><li>• There is no justification for not imposing minimum fines in the case of natural persons but limiting it to juristic person only.</li><li>• Clause 29, section 28R should be made subject to section 28S because the categorical prohibitions provided for are subject to exceptions enunciated in section 28S.</li><li>• It is not clear whether it is contemplated that the Tribunal should have jurisdiction to adjudicate on copyright infringement claims.</li></ul>	
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	<p>On a strict interpretation of the highlighted wording this does not appear to be the case. The section should state the position, whatever it may be, unequivocally. It is submitted that the best approach would be for the Tribunal not to have jurisdiction over these matters. One of the reasons for this is that in terms of the proposed section 29F the Tribunal must conduct its proceedings in an inquisitorial manner.</p>	
<p>Advocate Matzukis</p>	<ul style="list-style-type: none"> <li>• Clause 5- the clause should refer to the various royalties that might be attracted by the different bundle of rights in Copyright.</li> <li>• Concern with 6A in terms of ongoing future royalty payments as it may discourage investment into the music sector. Free market principle is being eroded.</li> <li>• The clause should apply to commissioned works rather than not. Commissioned works requires ongoing royalties.</li> <li>• Risk of publishers becoming commissioners.</li> <li>• Not in support of retrospective application and should be deleted.</li> <li>• Clause 11-wording should be expanded.</li> <li>• Accuracy needs to be improved as users do not submit accurate reports.</li> <li>• Clause 11- Supports the criminalisation of failure to report. Recommend removal of the word intentional.</li> <li>• Duty to report usage should be applicable not only to sound recordings but also to musical and literary works.</li> <li>• Establish a Task Team to monitor the above.</li> <li>• Clause 12-Welcome the wording in the amendment.</li> <li>• Clause 22-limitation welcomed.</li> </ul>	<ul style="list-style-type: none"> <li>• The comments have been noted.</li> <li>• These rights are only literary and musical in nature; therefore, this clause cannot deal with other rights.</li> </ul>



	<p>Recommended drafting on the Belgian Law.</p> <ul style="list-style-type: none"> <li>• Clause 25-Welcomes regulation of Collecting Societies.</li> <li>• Supports notion of reciprocity.</li> <li>• A fund should be set up where unclaimed monies can be deposited into for impoverished artists after the three years have elapsed.</li> <li>• Clause 27-Amounts are old and in 2018 should be closer to R50 000-R100 000 as a penalty.</li> <li>• The provision of criminal sanction for copyright infringement should be extended to include criminal sanction against failure to report use of copyrighted works, even if the use is licensed under a blanket license.</li> <li>• the Bill does little or nothing to address the civil compensations that should be due to owners who are the victims of copyright infringement.</li> <li>• Clauses 29 and 30-More definitions and descriptions are required around the Copyright Tribunal.</li> <li>• Tribunal needs experts in Copyright law not just retired or acting judges.</li> <li>• Clause 37-The Intellectual Property Laws Amendment Act should be repealed.</li> <li>• One Collecting Society per set of rights should be reconsidered as being part of the legislation.</li> <li>• 50/50 split for needletime should be reintroduced due to the history involved.</li> </ul>	
Copyright Alliance	<ul style="list-style-type: none"> <li>• Individual members have made submissions as per letter addressed to PC.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted</li> </ul>
ANFASA	<ul style="list-style-type: none"> <li>• Clause 5-Assignment is not applicable to literary works (rare).</li> <li>• Authors of literary works do not assign copyright to collecting societies. If there is assignment, it is to the publishers.</li> </ul>	<ul style="list-style-type: none"> <li>• The comments have been noted.</li> <li>• Assignments in the literary works are common between author and publisher and not between author and collecting society.</li> </ul>

	<ul style="list-style-type: none"> <li>• Clause disadvantageous to authors.</li> <li>• Literary works should be excluded from this clause.</li> <li>• Memorandum of Objects- reference to the 2013 Draft IP Policy should be removed as it has been replaced.</li> <li>• It will be obvious to the members of the Parliamentary Committee that it makes no sense to say that science and creative activities protect authors against copyright infringement. In themselves, protection of the economic interests of authors against infringement, and promoting the progress of science and creative activities are praiseworthy, but one doesn't depend on the other.</li> <li>• Memorandum does not understand the rights of authors.</li> </ul>	
Australian Digital Alliance	<ul style="list-style-type: none"> <li>• Supports the work done and all the exceptions and limitations in the Bill.</li> <li>• Request extension of the technical panel to not only represent rights holders.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted.</li> </ul>
Board of Healthcare Funders of Southern Africa	<ul style="list-style-type: none"> <li>• Clause 2-purports copyright in tables and compilations which is unnecessary.</li> <li>• There is a risk that members of the public will interpret this to mean that there can be no copyright in the contents of a table or compilation, which is clearly not the case. This could lead to uncertainty and the unintentional infringement of copyright.</li> <li>• Clause should be deleted.</li> </ul>	<ul style="list-style-type: none"> <li>• The comments have been noted.</li> </ul>
BVPG Attorneys	<ul style="list-style-type: none"> <li>• Submission respect of regulation of royalties for music.</li> <li>• Concerned that the legislation has not addressed the problem of multiple collecting</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>



	<p>societies.</p> <ul style="list-style-type: none"> <li>• Clients are concerned with the various existing collecting societies-many discrepancies.</li> <li>• The memorandum of objects still supports one collecting society per set of rights this does not appear in the Bill.</li> <li>• A perusal of previous submissions pertaining to the Bill, recognised the value of collective management – i.e. one collecting society interfacing with consumers of music, for example, and then sharing the royalties so collected, with those entitled to receive a share in such royalties.</li> <li>• Reconsider position on one collecting society per set of rights.</li> </ul>	
CAPASSO	<ul style="list-style-type: none"> <li>• Clause 5, there is a need to clarify the necessity for such an agreement.</li> <li>• The requirement for a 'cooling off' period as an integral part of the agreement needs to be qualified.</li> <li>• There may be financial implications that need to be considered prior to the operation of the reversion.</li> <li>• This clause might result in many companies opting to commission works rather than enter into publishing agreements with authors of literary or musical works.</li> <li>• Clause 11, the language in Section 9A(4) read with Section 9A (1) (aA) regarding log sheets should also be found in Sections 6, 7 &amp; 8 or within Chapter1A.</li> <li>• The format of usage reports should be determined by collecting societies as reporting requirements constantly evolve with time.</li> <li>• Clause 22, the term "tariff" in this section needs to be changed to read "fee" as the term</li> </ul>	<ul style="list-style-type: none"> <li>• The comments have been noted.</li> <li>• In terms of clause 22 should be fee and not tariff (license fee).</li> </ul>

	<p>tariff denotes general application.</p> <ul style="list-style-type: none"> <li>• Clause 25, collecting society regulation is welcome with caution.</li> <li>• The exclusive nature of copyright coupled with acceptance of the Berne Convention, makes the requirement for reciprocity unnecessary with regard to musical works.</li> <li>• Due to the nature of music consumption, period to claim unmatched royalties should be increased from 3 to 5 years.</li> <li>• Clause 27, introduction of criminal penalties is supported but such penalties must aid in ensuring that there is direct benefit to the authors when their works are infringed.</li> <li>• Introduction of civil and other statutory remedies would assist.</li> </ul>	
DALRO	<ul style="list-style-type: none"> <li>• Clause 1, definition of 'Visual Artistic Works' has been proposed.</li> <li>• Clause 7, Supports the introduction of the RRR in the Bill, and proposes that RRR should appear in a separate chapter. Suggested drafting language for new chapter related to RRR.</li> <li>• Supports reciprocal designation of other countries that have the RRR.</li> <li>• Supports limiting the application of the RRR to "visual artistic works". However, the exclusions in the Bill are not sufficient.</li> <li>• Section 7B (6) together with section 7(3)(d) are confusing and may be in conflict with the Constitution.</li> <li>• The RRR should not apply to sales where the contract date preceded the coming into force of these provisions.</li> <li>• The person liable to pay the RRR to the artist is not specified.</li> </ul>	<ul style="list-style-type: none"> <li>• The comments have been noted.</li> <li>• It is our view that the seller should be liable. (UK as an example is the seller)</li> </ul>

	<ul style="list-style-type: none"><li>• There are no provisions to enable artists to claim their royalties in terms of RRR and there are no artists or collecting societies representing them to enforce their rights.</li><li>• Clause 25, the memorandum of objects does not contain an explanation of the proposed framework behind the regulation of “collecting societies”, as defined in the Bill.</li><li>• Clause 27, there are no remedies to prevent online infringement.</li><li>• Clause 5 and Clause 7, the provisions in section 6A and 7A undermine contractual arrangements for remuneration. With regard to publishing sectors, the provisions indicate that existing practices were not taken into account.</li><li>• Does not support the terms of contract prescribed in the Bill applying retrospectively to works that have already been assigned.</li><li>• Clause 11, the obligation on users to record licensed re-uses of copyright works under collective licences must appear in the new Chapter 1A.</li><li>• Criminal sanctions are necessary; however, there is no guarantee that prosecuting authorities will prosecute every case of non-compliance.</li><li>• Collecting societies should take action to compel compliance.</li><li>• Has reservations about unlimited fines on individuals and fines determined as a measure of turnover. Instead, recommends an increased fixed maximum fine.</li><li>• Clause 25, the grounds on which accreditation of an existing collecting society can be refused should be set out in the Act, and new</li></ul>	
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	<p>Section 22B(7)(a) should be adapted accordingly.</p> <ul style="list-style-type: none"><li>• Does not support provisions in section 22B(7)(b) due to their open-ended nature.</li><li>• The new Section 22C(3) has to be withdrawn, since collecting societies may enter into bilateral agreements with collecting societies in other countries. The new section 22C(3)(c) will place SA in breach of its obligations under the Berne Convention and TRIPS to apply the principle of 'national treatment'.</li><li>• Clause 15, amendment should be withdrawn since this provision will be a direct disincentive to visual artists creating works for public spaces.</li><li>• Clause 27, this amendment will not bring about any real benefit in combating infringement as fines are paid to the State.</li><li>• Clause 29, judges appointed to the Tribunal should have at least "adequate knowledge" in commercial law, intellectual property law and copyright law.</li><li>• Clause 29, the logistics of setting up the Tribunal's office, appointing its members and issuing regulations also justify a future effective date for the Bill to become law once it has been signed by the President. We submit that the substantive provisions of the Bill should not take effect before the Tribunal can be put in place.</li><li>• We question, however, whether the cost for such a Tribunal has been assessed and budgeted by Government since, in the scheme of this Bill, much will hinge on a strong Tribunal to give clarity on many of the provisions being introduced by the Bill.</li></ul>	
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	<ul style="list-style-type: none"> <li>• Concern that there has been no input from the Department of Justice and Constitutional Development or an impact assessment of the cost these provisions before releasing the Bill with this revision for public consultation.</li> <li>• Clause 37, IPLAA is not operational. Decision on IPLAA should be made by Parliament before the Bill proceeds further and that IPLAA should be repealed by this Bill, and that the section numbering and cross references of the current Act, before IPLAA, be re-instated.</li> </ul>	
FIAPF	<ul style="list-style-type: none"> <li>• Clause 5, clause 7 and clause 9, the retention of these provisions undermines arrangements for remuneration which include collective bargaining.</li> <li>• The retention of these clauses will discourage distributors and other financiers from investing.</li> <li>• The proposed rigid royalty approach is not a "one size fits all".</li> <li>• The language in these clauses presents a burden for dealing with both SA and international authors, artists, composers and film directors.</li> <li>• The terms of contract prescribed by the new provisions in the Bill will be challenging to implement.</li> <li>• Clause 27, the proposed subsection (6) creates an unacceptable risk of criminal prosecution of film producers after the expiry of the period of an assignment.</li> <li>• Retrospectivity to works that have already been assigned is unfair and unrealistic and may be contrary to the Constitution.</li> <li>• A legal opinion on retrospectivity should have been obtained first.</li> <li>• Clause 22, these provisions coupled with</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<p>those in clause 3 will create uncertainty as to the initial ownership of all copyright works.</p> <ul style="list-style-type: none"> <li>• It would have been preferred to firstly decide which works would remain or be removed from section 21(1)(c), based on sector-based research, evidence and impact assessment.</li> <li>• The repeal of the whole section 21(1)(c) is suggested.</li> <li>• Clause 27, counsels against this amendment, instead suggests an increase in the amount of the maximum fine.</li> <li>• There is no guarantee that prosecuting authorities will prosecute every case of copyright infringement.</li> <li>• A fine based on turnover could bias prosecuting companies with assets and overlook those companies with less assets which would result in an imbalance.</li> <li>• Fines will be paid to the State, and so will not assist copyright owners in recovering their losses from the infringement.</li> </ul> <p>The Bill has no new civil remedies to support copyright owners in relation to cases of online infringement.</p>	
IBFC	<ul style="list-style-type: none"> <li>• Clause 9, section 8A will fail to change the plight of audio-visual authors (producers) in the SA because it does not apply to commissions.</li> <li>• Without applying to commissions, the section has no practical application as producers never own their works due to the wording of Section 21.</li> <li>• Clause 22, even if a work is commissioned, the current SA climate does not justify only one party owning 100% of the copyright in a work.</li> <li>• The copyright should vest in the author and a</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>



	<p>broadcaster should be entitled to licence the work for a period of time.</p> <ul style="list-style-type: none"> <li>• Clause 25, the film industry does not have a collecting society because film makers do not own copyright to their works.</li> </ul>	
Innovus	<ul style="list-style-type: none"> <li>• Regarding retrospective application proposed in the Bill, this amounts to interference in existing commercial arrangements which could have very serious implications on any academic institution or technology business. This could lead to the closure of academic institutions and technology businesses. Recommendation is that all retrospective applications of royalty rights must be removed from the Bill.</li> <li>• Regarding royalties of authors, if the intent is to protect artists, then the proposed compulsory royalty rights should focus on works of a truly artistic nature such as works of art, literary manuscripts and musical compositions only. The scope of the obligatory royalty should therefore be carefully limited to achieve its stated goal only namely to “ensure that artists do not die as paupers”.</li> <li>• We do not believe it would be appropriate to apply the obligatory royalty to copyright works made under contract – whether under employment contract or a commissioned services contract.</li> </ul>	
Denise Nicholson	<ul style="list-style-type: none"> <li>• WITS supports the USAF submission.</li> <li>• Reinstate the exception for computer programmes as it is omitted from the Bill.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
Fees must Fall Movement	<ul style="list-style-type: none"> <li>• The #FeesMustFall Movement support the fair use (section 12A) and educational use (section 12D) provisions in the Copyright Amendment Bill. These new rights will clarify that copyright</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<p>law protects the rights of students and of teachers to make private research and study copies, including in course packs, to facilitate access to our constitutional right to education.</p> <ul style="list-style-type: none"> <li>• We particularly support the focus of the Bill on combatting excessive pricing.</li> </ul>	
Google	<ul style="list-style-type: none"> <li>• We commend the government for its thoughtful outline of a fair use doctrine.</li> <li>• The current draft leaves the status of hyperlinks uncertain with respect to the new rights of communication to the public and making available.</li> <li>• Further, we note that the Bill goes beyond international treaties in providing an exclusive right of communication to the public for phonogram producers and broadcasters. The WIPO Performances and Phonograms Treaty (WPPT) treaty does not provide for an exclusive right of communication to the public for sound recordings, but only for a right of making available.</li> <li>• Include news of the day as an exclusion under the Scope of Protection clause as is in the Berne Convention.</li> <li>• Clause 7- Non-exclusive licenses are not considered an assignment of copyright in world copyright laws, but to ensure that non-exclusive licensees are not inadvertently swept up by proposed Section 7A it would be helpful to add a Section 7A(5)(d)(iii): "(iii) non-exclusive licenses."</li> <li>• Supports clause on temporary copies.</li> <li>• Section 27(5A) and 28 O- could discourage legitimate computer security research efforts.</li> <li>• If the dti still decides to retain these provisions, we recommend the addition of an</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

Graeme Gilfillan	<p>explicit exception for security research.</p> <ul style="list-style-type: none"> <li>• The Bill does not provide for digital management rights.</li> <li>• Requires definitions of the following: “digital rights”, “blocking”, “link/linking”, “platform”, “cloud”, “computing”, “online”, “data mining”, “text mining”, “video-on-demand”, “out of commerce”, “copyright-protected”, “website”, “intermediary” and “remuneration”; internet and several other terms as per submission.</li> <li>• Omits “safe harbour” provisions or any linkage with the most important section of the Electronic Communications and Transactions Act 25 of 2002 addressing “safe harbour” provisions.</li> <li>• Omits dealing with data and online contracts.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
European Visual Artist’s	<ul style="list-style-type: none"> <li>• The introduction of RRR in SA for visual artists is welcomed as visual authors often are only late in their life in a position where their works generate substantial incomes.</li> <li>• Recommendation that the Bill should clearly define who the debtor of RRR is in order to avoid disputes and denials.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
IFLA	<ul style="list-style-type: none"> <li>• Supports provisions concerning uses by libraries and cultural heritage institutions and their patrons, as well as a broader fair use provision.</li> <li>• Supports the comments of USAF.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
IFFRO	<ul style="list-style-type: none"> <li>• Memorandum of objects on the Bill-the Bill does not achieve its objects.</li> <li>• Exceptions to Copyright will negatively impact the further creation of South African authored works by reducing income of authors and publishers that they receive through DALRO.</li> <li>• Clause 5-Concerned about the applicability</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>



	<p>of assignment to authors, assignment not applicable and author will not benefit.</p> <ul style="list-style-type: none"> <li>• Clause 7- Supports introduction of the Resale Royalty for visual artists.</li> <li>• The Bill should state which party to the sale should have the obligation to pay the royalty.</li> <li>• Clause 25-concerned about the restriction on foreign payments imposed by 22C(3) may be a breach of National Treatment.</li> </ul>	
International Intellectual Property Alliance	<ul style="list-style-type: none"> <li>• New provisions regarding 'making available' right for record producers raise concerns.</li> <li>• Licensing and regulatory mechanisms which will undermine the digital market place.</li> <li>• Restrictions on the freedom to contract-limitation of assignment to 25 years.</li> <li>• Inadequate criminal and civil remedies for online piracy.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
Independent Producers Organisation	<ul style="list-style-type: none"> <li>• Clause 22-commend the efforts to improve Section 21(c). However, the section still does not create a default ownership in the work by its author.</li> <li>• Recommends a move to the default retention of rights by a creator or author.</li> <li>• Clause 7- objects to any royalties or remuneration being imposed retrospectively.</li> <li>• Clause 23-Not in support of the limitation of assignment to 25 years for literary and musical works.</li> <li>• Clause 34-Creates a limitation of the freedom to contract.</li> <li>• Clause 33- does not believe that the dti is the right body to determine contractual terms in a particular business.</li> <li>• Clause 15-supported.</li> <li>• No tools for online piracy.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

Media Monitoring Africa (MMA)	<ul style="list-style-type: none"> <li>• Further public consultation/engagement on the CAB as a whole is needed.</li> <li>• Regarding RRR, it is not clear from the provision who will pay the royalty and how</li> <li>• Recommendation that the assignment of RRR provision should be deleted.</li> <li>• The right of panorama is unduly limited. It should be expanded to include photographs and other images (such as paintings).</li> <li>• Wording suggested for subsection 2 of section 15 in clause 15.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
International Publishers Association	<ul style="list-style-type: none"> <li>• Supports the submission of PASA.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted</li> </ul>
National Inquiry Service Centre (NISC)	<ul style="list-style-type: none"> <li>• Regarding clause 5, this provision directly interferes with the functioning of scholarly journal publishing, where authors of articles in academic journals typically assign the copyright to the publisher of the journal or to the learned society under whose auspices the journal is produced. This assignment is done without financial consideration, since their motivation to publish in academic journals is reputational, rather than monetary.</li> <li>• Royalty demands made upon local learned societies in terms of section 6A will be untenable.</li> <li>• The provisions of the new Section 6A (in conjunction with a contract override provision in new Section 39B (Clause 34) will not only interfere with relationships between SA scholarly authors and their publishers.</li> <li>• Section 6A should not be proceeded with until the PC has a clear understanding of the existing arrangements that exist between scholarly journal publishers and their authors.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
Kagiso Media House	<ul style="list-style-type: none"> <li>• Opposed to allowing free reproduction or adaptation of any educational literary or other</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<p>works in which copyright subsists whether for commercial purposes or otherwise.</p> <ul style="list-style-type: none"> <li>• Clause 1- that the definition be amended to provide factors which should be taken into account when determining whether an artistic work may be deemed to be a visual artistic work, such as (but possibly not limited to):the nature of the work; the manner of creation; and the purpose of creation.</li> <li>• Clauses 5-9- the current wording of the proposed sections 6A, 7A and 8A will have on various industries goes beyond the scope of merely addressing an author's right to royalties and fails to take into account the commercial trends, commercial impact and types of works.</li> <li>• Retrospectivity is not supported.</li> <li>• Exclusion of authors who are not citizens of South Africa or domiciled here from the resale royalty contravenes the TRIPS agreement and the Berne Convention.</li> <li>• Definition of what a designated country is and how such designation takes place.</li> <li>• Reconsider and revise appropriately to clearly provide certainty on the manner, form, procedure and periods for submitting and registering log sheets.</li> <li>• Clause 15-does not support provision should be deleted or limited.</li> <li>• Clause 22- does not provide a default position when no agreement has been concluded.</li> <li>• Introducing the principle of limited ownership should be deleted.</li> <li>• Clause 25-Contrary to the Berne Convention and TRIPS Agreement.</li> <li>• Clause 27-supported.</li> <li>• Clauses 29 and 30- not possible to provide</li> </ul>	
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	<p>submissions on Section 29E as the proposed prescribed form, procedure, rules and fees are not stipulated.</p> <ul style="list-style-type: none"> <li>• The provisions regarding the composition of the Tribunal appear to be in order.</li> </ul>	
Law Society of South Africa	<ul style="list-style-type: none"> <li>• Supports submission by SAIPL.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted</li> </ul>
Library and Information Association of South Africa	<ul style="list-style-type: none"> <li>• Supports Universities of South Africa (USAF) submission.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted</li> </ul>
National Association of Broadcasters	<ul style="list-style-type: none"> <li>• Retrospective application-will be disruptive and legislation may not be applied retrospectively.</li> <li>• Clause 7-What constitutes a designated country, need to be mindful of international obligations.</li> <li>• Royalty percentages-concerned about the provision it is unclear why the author of a work is entitled to a royalty if they have already been compensated for the assigned work.</li> <li>• Bill only makes provision for one remuneration model Bill should allow flexibility to contract. Freedom to contract should be upheld and Tribunal should not be allowed to determine royalty percentages.</li> <li>• Clause 22-Recommend that the principal Act be retained in this regard.</li> <li>• New process should be approached with caution; copyright owners should be given at least 7yrs to exploit the work. Purpose of the commissioned work should be defined.</li> <li>• Collecting Societies- jeopardizes international legality.</li> <li>• Recommends that Bill should make it mandatory for collecting societies to report on the following – amounts of royalties received, amounts retained, distribution and interest.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
MNET and Multichoice	<ul style="list-style-type: none"> <li>• The Bill seems to assume a one-size-fits-all approach to copyright across all creative</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<p>industries.</p> <ul style="list-style-type: none"> <li>• Clause 5 and 9 relating to royalty payments, inflexibility can be remedied by providing for an alternative between remuneration or a percentage of a royalty.</li> <li>• Inclusion of the retrospective provisions in respect of commissioned works not supported as retrospectivity poses Constitutional challenges.</li> <li>• It is not clear what is intended by "a cooling off period. Proposed that it be deleted.</li> <li>• Drafting suggested for section 6A and 8A.</li> <li>• Clause 22, the proposed approach in section 21(1)(c) will create legal uncertainty. In the event that a work is commissioned but not used, the author approaching a Tribunal is supported with suggested amendments.</li> <li>• It is not practical or cost effective for the Tribunal to be approached haphazardly at any time (after the seven year period), without an attempt by the parties to first agree on the matter. This will promote litigation and unnecessarily drain the Tribunal's resources.</li> <li>• Proposed drafting on Commissioned works.</li> <li>• Not in support of giving Minister discretionary powers to include minimum requirements of an agreement because it limits freedom to contract and should be left to contract law.</li> <li>• Not in support of Minister's power to prescribe royalty rates or tariffs as the powers are too wide and that the proposed section 39(c) should be deleted.</li> <li>• Regarding the Copyright Tribunal, measures to strengthen and streamline the Tribunal is supported with suggested wording.</li> <li>• Clause 25, the strengthening and better regulation of Collecting Societies is supported</li> </ul>	
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	<p>and the definition of the word "Commission" is proposed. However, the proposed powers to be given to the Commission are too wide and vague.</p> <ul style="list-style-type: none"><li>• Clause 27, The Copyright Tribunal is not the appropriate forum to enforce fines in terms of section 175 of the Companies Act. A turnover-based fine is not appropriate in the context of intellectual property rights penalties.</li><li>• Exclusive right of Communication to the public by wire or wireless means should be extended to broadcasters.</li><li>• Wording proposed for definition of TPMs as well as a new section related to online infringement.</li><li>• Regarding Transitional provisions, the Bill does not make provision for phased implementation and propose that the Bill come into operation 24 months after its passage to allow parties to regulate their future contracts accordingly.</li></ul>	
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<p>National Clothing Retail Federation of South Africa (NCRF)</p>	<ul style="list-style-type: none"> <li>• Clause 11-problem with retailers having to register the music being played. No clarity on the process.</li> <li>• Submitting a report to the copyright owner etc. amounts to a playlist which is a huge task as the membership is so big.</li> <li>• A rebate should be given on the tariff for exchange of compilation of the playlists.</li> <li>• It appears that the dti has applied the usual administrative penalty of 10% of annual turnover but this time, said that this is a minimum amount-harsh sentence.</li> <li>• Clause 25- there must be a restriction on the number of collecting societies that are formed and accredited. The more societies there are, the more administration there is for businesses that play music on their properties, and the further costs, built into the tariffs charged, to run these societies.</li> <li>• Appeals section has been deleted and should be reinstated especially for the Tribunal purposes.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
<p>Publishers Association of South Africa (PASA)</p>	<ul style="list-style-type: none"> <li>• Retrospectivity- Provisions having retrospective effect have been proposed in the Bill, without legal opinion first having been obtained and made available to the public for consideration.</li> <li>• The Memorandum of Objects, however, lacks an overarching description of the new framework.</li> <li>• Clarity sought on whether South Africa intends acceding to international treaties affecting copyright.</li> <li>• Draft Intellectual Property Policy should not be mentioned as it did not materialise into a final policy.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<ul style="list-style-type: none"> <li>• 25-year limit on assignment is not mentioned in the memorandum which is a material omission.</li> <li>• The CRC limited assignment only in respect of musical works.</li> <li>• Clause 27-the new criminal sanctions create an unacceptable risk to publishers.</li> <li>• Clause 22-there is no rationale for the proposed changes.</li> <li>• Can ostensibly conflict with each other and will create uncertainty as to the initial ownership of all copyright works.</li> <li>• Desired to retain Section 21(1)©.</li> <li>• The Bill introduces no remedies for online infringement.</li> <li>• Provisions in the Bill provisions undermine contractual arrangements for remuneration.</li> <li>• Digital technologies affect how assignment previously occurred to publishers.</li> <li>• Clause 25- There is no basis in international law requiring or even justifying reciprocal agreements between countries for the remittance of royalties by collecting societies, which, in relation to royalties collected for the use of literary works.</li> <li>• Clauses 30-31- the substantive provisions of the Bill should not take effect before the Tribunal can be put in place.</li> <li>• Whether the cost for such a Tribunal has been assessed and budgeted by Government.</li> <li>• Appeal process was removed without consultation.</li> <li>• Clause 37- IPLAA should be repealed by this Bill.</li> </ul>	
PEN Afrikaans	<ul style="list-style-type: none"> <li>• Memorandum on the Objects of the Copyright Amendment Bill- question of constitutional</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<p>validity arises in the form of whether the Bill offends any of the provisions of the Bill of Rights.</p> <ul style="list-style-type: none"> <li>• Clause 5- unclear on the nature and/or strength of the right of the author to a percentage of the royalties on his/her work.</li> <li>• The 48-month period provided by the Bill for retrospective application also has not been motivated, nor is there precedent in setting this specific period.</li> <li>• Concern over referring the matter to the tribunal.</li> <li>• Failure by the Bill to shed light on the nature of the right to a percentage means that the Tribunal does not have any precedent in determining a fair percentage, nor any statutory guidance.</li> <li>• Legislation does not apply retrospectively unless certain conditions are present.</li> <li>• Clause 11- introduces an anomalous and decidedly radical shift from the measures that are usually taken to punish infringers of copyright law.</li> <li>• Measures are strict and punitive.</li> <li>• Clause 22- injects significant uncertainty into an industry that has no need for amendment on this particular matter, both from the perspective of author and publisher.</li> </ul>	
<p>Personal Managers' Association</p>	<ul style="list-style-type: none"> <li>• Clause 1-audiovisual work should be excluded.</li> <li>• Clause 9-provision should translate in the Performers Protection Amendment Bill in line with Article 12(3) of the Beijing Treaty.</li> <li>• The term author should be replaced with Director as the producer is the copyright owner and if possible with the writer and actor too.</li> <li>• Clause 11-penalties are practically</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>



	<ul style="list-style-type: none"> <li>unenforceable.</li> <li>• Clause 12-grants broadcasters IP protection against signal theft.</li> <li>• Should broadcast signals be afforded IP protection care must be taken that such protection does not encroach on the content.</li> <li>• Protection of the signal must not be allowed to extend to a post fixation right to the work.</li> <li>• Clause 15-wording is not clear.</li> <li>• Clause 22-provision welcomed but could be undermined in other provisions in the clause.</li> <li>• Clause 25-distinguish between a natural and juristic person.</li> <li>• Reciprocity clause should be deleted.</li> </ul>	
Priya Hollis	<ul style="list-style-type: none"> <li>• Clause 5- restrict a musician's intellectual property and Constitutional rights to freely contract in respect of their works.</li> <li>• No meaningful digital enforcement mechanisms have been introduced.</li> <li>• Civil liability and punitive damages should be introduced.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
Right to Know	<ul style="list-style-type: none"> <li>• The current Copyright Act is unduly complex and lacks a general public interest exception.</li> <li>• Proposal to add a public interest exception to copyright that would permit all "fair use" of a copyrighted work.</li> <li>• Support the freedom of panorama.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
ReCreateZA	<ul style="list-style-type: none"> <li>• Support the exceptions especially fair use for freedom of expression.</li> <li>• Support that the Commissioner should not be the owner of the work.</li> <li>• CMOs should have a fiduciary duty to creators, be subject to member governance, and be subject to government oversight on the reasonableness of their expenditure and pay-outs.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

- The exception for computer programmes should be reinstated, prior bill contained well drafted exception based on the EU law.
- Clause 1-support a limited definition, recommend the EU definition.
- Common craft works should not become subject to a resale royalty.
- Incorporate a value floor.
- Clause 5- weary of provisions of law that encumber sales with additional duties.
- Retroactive application of laws can raise serious constitutional and moral issues-delete provision.
- Clause 7-Must conform the Berne Convention-The Berne Convention requires that a resale royalty right, where provided, "may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is.
- Clause 11- Making the violation of the clause an offense puts the onus of enforcement on
- Government. Enforcement should rather continue to be the duty of collective management organizations through civil law.
- Clause 12- important to limit the exclusive rights in programme-carrying signals to whatever rights may exist (if any), under general copyright principles, to the signals themselves.
- Delete 11(b) and (c).
- Clause 15-Supported.
- Clause 22- strong interest in the rights to own the works we create and to have those rights assigned to others only through contract.
- support proposed section 21© to the extent

	<p>that it restores the default that creators own the works they create absent contract.</p> <ul style="list-style-type: none"> <li>• Section 21(3) of the present Act takes away that right – giving commissioners the right to “own” copyright in our works.</li> <li>• contains limited redress. It proposes a very complicated and litigation-oriented process for providing authors’ rights in respect of commissioned works where they are not used.</li> <li>• Do not support approaching the Tribunal.</li> <li>• The Bill does not address the common situation in which a creator seeks to use a work, or the source material to create the work, for purposes other than that for which it is commissioned.</li> <li>• Clause 25- a fair provision that ensures that copyright is not a means only of exporting royalty payments from South Africa consumers to foreign jurisdictions.</li> <li>• Provision should be consistent with the Company Act, the officers and directors of all CMO have a fiduciary duty to exercise their powers in good faith and in the best interest of the creators/members of the organization.</li> <li>• Clause 27- Fines of 5% or 10% of revenue may be excessively disproportionate to any harm caused by copyright infringement.</li> <li>• Clause 29- This provision prevents the tribunal from ruling on administrative justice claims that may brought against the Commission.</li> </ul>	
RISA	<ul style="list-style-type: none"> <li>• Not in support of exceptions and limitations.</li> <li>• Technological Protection Measures-is problematic because technologies that prevent or restrict infringement.</li> <li>• Recommend that the EU Copyright directive be followed.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>



	<ul style="list-style-type: none"> <li>• Propose deletion of (b) in definition.</li> <li>• Recommend that the definition of TPM circumvention device be amended. Definition based on EU directive.</li> <li>• Exceptions for the TMPS are not clearly defined or in line with the Berne Three Step Test.</li> <li>• Recommend looking at the UK Copyright, Designs and Patent legislation.</li> <li>• Accreditation of Collecting Societies-welcome the clarification that joint societies may still operate.</li> <li>• Reciprocity-agreements are between respective collecting societies and not countries.</li> <li>• Performers Remuneration-contradictory provisions to create clarity 50% split for record companies and performers should be clear.</li> </ul>	
South African Guild of Actors	<ul style="list-style-type: none"> <li>• Clause 1, audiovisual works should be expressly excluded as the definitions of "visual artistic work" and "audiovisual work" seem to overlap.</li> <li>• Clause 9, actors should also be entitled to a share of the royalties received by the copyright owner; this would be in agreement with Art. 12 (3) of the Beijing Treaty. Drafting language has been suggested for a new subsection.</li> <li>• Clause 11, reference to 'copyright owner' instead of just 'owner' should be made. Section 9A should be subjected to mandatory collective management.</li> <li>• Offence for failure to keep proper record would be rendered practically unenforceable in the absence of mandatory collective management.</li> <li>• Clause 12, cautions that IP protection afforded by programme carrying signals to broadcasters</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<p>should not encroach on the content carried by their signals.</p> <ul style="list-style-type: none"> <li>• Protection of the broadcaster's signal must not be allowed to extend to a post-fixation right to the "work".</li> <li>• Clause 15, the wording of the section is confusing.</li> <li>• Clause 22, the introduction of section 21(3) is welcomed but the current wording, which is vague, can undermine the intention of the provision.</li> <li>• Clause 25, distinction should be made between a "natural person" and a "legal person" in the wording of this section.</li> <li>• The provision on the reciprocity applying to pay-outs of royalties by Collecting Societies to foreign countries should be deleted as collecting societies are obliged to pay-out royalties collected regardless of whether a reciprocal agreement exists or not.</li> <li>• Royalty distribution should be done regularly. The 3 year rule should only apply where CMOs cannot, after a diligent search, find the beneficiary. It is suggested that the provision be reworded.</li> </ul>	
South African Guild of Editors	<ul style="list-style-type: none"> <li>• Expansion of definitions of audio visual work, author and copyright owner for post-production professionals.</li> <li>• Clause 9- post-productive contributions of SAGE members be specifically statutorily included to ensure their acknowledgement and participation in the collaborative creative process.</li> <li>• Certain definitions in the Act exclude other post-production contributors to the respective processes.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<ul style="list-style-type: none"> <li>• SAGE members are excluded from Clause 9.</li> <li>• Clause 22-post production professionals are excluded from the amendment.</li> <li>• The case of a commissioned work, the copyright in such work remains that of the person commissioning such work, and the exploitation of, or lack thereof is entirely at such person's behest.</li> <li>• Failure to create a mechanism of collective management for SAGE members.</li> <li>• Clause 25-should be amended to include SAGE members.</li> <li>• Definition of author should include co-author.</li> <li>• System of remuneration be implemented determined by the individual actual post-production contribution. (Editors and Sound designers)</li> </ul>	
<p>South African Institute of Intellectual Property Law (SAIPL)</p>	<ul style="list-style-type: none"> <li>• With the Bill in its current form, the objectives of the Bill as expressed in the Memorandum of objects will not be achieved.</li> <li>• Clause 1, it is not clear if the visual artistic works definition includes works of craftsmanship as artistic.</li> <li>• Clause 5 and 7, section 6A is an example of 'dead law' in the publishing industry as assignment of literary works in this industry does not generally occur.</li> <li>• These clauses will have dire consequences with regard to investments. The proposed perpetual royalty right may lead to a decline in investment.</li> <li>• It is not clear as to which clauses will section 6A and 7A specifically apply too.</li> <li>• Recommendation is that the proposal to legislate what contracts should look like in the creative sector be reconsidered.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>



	<ul style="list-style-type: none"><li>• The retrospective application of the proposed Clauses 6A and 7A is not commercially or legally recommended.</li><li>• Recommendation is that Clauses 6A and 7A be removed from the Bill in their entirety.</li><li>• Clause 11, failure to report being an offence is commended. Consultation should be done with collecting societies in coming up with proper penalties for non-reporting.</li><li>• Clause 15, the Bill should specify the types of works that the proposed exception will apply to as it is currently too broad.</li><li>• Drafting language for clause 15 has been proposed.</li><li>• Clause 22, the introduction of the limited ownership rights is likely to cause an increase in litigation.</li><li>• The adjudication procedure and a dispute resolution is welcome.</li><li>• Clause 25, it is not clear why the one collecting society per right has been excluded from the Bill.</li><li>• It is irregular for existing collecting societies to have to reapply for accreditation in terms of section 22B(7).</li><li>• With regard to reciprocity, the clause should be struck from the Bill since it is likely to contravene SA's obligation of 'national treatment' in terms of the Berne Convention and TRIPS.</li><li>• It is recommended that collecting societies should attempt to trace a recipient for a period of 3 years failing which the royalty should be distributed proportionally to other members.</li><li>• Clause 27, the increase in penalties for infringement is welcomed. The percentage</li></ul>	
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	<p>payable by a natural person has not been specified.</p> <ul style="list-style-type: none"> <li>• The link of a penalty to turnover should be replaced by a fixed percentage per infringing article.</li> <li>• Clause 29 and 30, the constitution of the Tribunal, its jurisdiction, the manner in which the proceedings will be conducted and the rules that will regulate them should be beefed up.</li> <li>• Clause 37, the transitional provisions are incomplete. A grace period should be given before the Act is operational to allow companies to align properly.</li> </ul>	
South African Library for the Blind	<ul style="list-style-type: none"> <li>• The Marrakech Treaty- Governments who ratified the Treaty must fulfill two main obligations when implementing the Treaty-(1) Provide for limitations and exceptions in national copyright legislation and (2) To allow the cross-border exchange of accessible copies.</li> <li>• These two provisions have been sufficiently addressed in Clause 19D(1 to 4).</li> <li>• Not addressing the challenges of increasing access to accessible reading material.</li> <li>• Pleads for ratification of the Treaty.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
SAMPRA	<ul style="list-style-type: none"> <li>• Royalties regarding sound recordings- The proposed amendment to Section 6 to include "communication to the public" in addition to the current wording of "performing the work in public" will create unintended challenges to rights of copyright owners of sound recordings as well as performers.</li> <li>• Proposed that the amendment to Section 9 be amended by inserting section 9 (f) "performing the sound recording in public".</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<ul style="list-style-type: none"> <li>• Obligation of the user to register and submit report- sufficient information is ordinarily required to enable fair distribution of royalties.</li> <li>• The proposed amendment, it appears that the primary purpose of the playlists is calculation of royalties (licence fee) payable. This presupposes a usage first and payment after.</li> <li>• The amendment must also make the following clear: the forms must be submitted to the copyright owner or collecting societies; and there must be an inclusion of a provision that empowers the Minister to make regulations in respect of the "prescribed manner and form" and "prescribed period and manner".</li> <li>• Offence relating to failure to register or make submission and penalties thereto-effectiveness of criminal sanction is dependent on an effective investigation, policing and court system.</li> <li>• Clause 25- Regulation 3(1)© provides for a "joint" collecting society comprising of copyright owners and performers, the proposed section 22B does not cater for "joint" collecting societies.</li> <li>• The splitting of administration from the proposed section 22B will result in increased administrative costs.</li> <li>• The proposed section 22B (7) on transitional provisions to provide for existing collecting societies caters for an uninterrupted administration of right by existing collecting societies. However, joint collecting societies like SAMPRA will face legitimacy and administration challenges during the transitional phase if the section is not amended to provide for joint society.</li> <li>• Recommend- the inclusion of joint collecting</li> </ul>	
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	<ul style="list-style-type: none"> <li>• Clause 5-proposed that the exception in Section 6A(5)(d) apply to the entire section and not merely to the subsection and should cover works of employees and commissioned works.</li> <li>• 6A(4) is burdensome.</li> <li>• Does not support retrospective application.</li> <li>• Clause 15-limit the scope as Billboards are in a public place.</li> <li>• Clause 6A(5)(a), If the 48 months expires without the royalty negotiated stipulated in 6A(5)a, are the rights forfeited?</li> <li>• In the instance, the author is deceased, but the copyright has not expired, does the rights to negotiate royalty apply to the heirs?</li> <li>• Clauses 29-37-Powers of the Tribunal are too broad.</li> </ul>	
<p>Global Expert Network on Copyright User Rights Creative Commons Corporation (Sean Flynn)</p>	<ul style="list-style-type: none"> <li>• Supports submission of RecreateZa.</li> <li>• Hybrid general exception that combines a set of modern specific exceptions for various purposes (Section 12B) and an open general exception that can be used to assess any use not specifically authorised. Both provisions greatly improve the clarity and balance in the existing law.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted.</li> </ul>
<p>Spoor and Fischer</p>	<ul style="list-style-type: none"> <li>• Clause 1- it may have been simpler merely to refer to the works identified in sub-section (a) of the definition of “artistic work”. Wording of definition is acceptable.</li> <li>• Clause 5-Content suffices.</li> <li>• Include an obligation on the parties to record in the agreement an obligation to the consideration payable for the assignment if any (as opposed to the royalty percentage agreed to).</li> <li>• Time period of the cooling period should be 5-</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<p>7 days.</p> <ul style="list-style-type: none"> <li>• Not in support of retrospectivity in the Bill.</li> <li>• Concern over the word must in clause-freedom to contract.</li> <li>• There is a contradiction, in our view, between this proposed clause 6A(5)(a) as it appears to contradict clause 6A(1). The latter clause records that the assignor of copyright in the literary or musical work has the “right” to a percentage of royalty. Therefore, it is possible to negotiate a waiver of that right and for the author to contract out of the entitlement to receive a royalty.</li> <li>• Include the obligation on the Commissioner to pay the commissioned party “money or monies worth”.</li> <li>• Clause 7-Content suffices- include an obligation on the parties to record in the agreement the consideration payable for the assignment if any (as opposed to the royalty percentage agreed to).</li> <li>• The time period for the cooling off period be stipulated, possibly 5 (five) to 7 (seven) days.</li> <li>• Similar comments to previous clause.</li> <li>• Silent on the specific issue as to who exactly must pay the author. The identity of the party on whom the obligation rests to pay the author is not specified and therefore unclear.</li> <li>• Clause 9-Audio visual is covered under cinematograph film.</li> <li>• Term royalty is not appropriate.</li> <li>• The written agreement which is contemplated by this section is said to be “between the author and the assignee”. The author might not necessarily be the owner of the copyright and may therefore not necessarily be the correct</li> </ul>	
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	<p>deleted.</p> <ul style="list-style-type: none"> <li>• Does not support clause 12D(7)</li> </ul>	
Tape Aids for the Blind	<ul style="list-style-type: none"> <li>• Supports Clause 19D.</li> <li>• Clause 5- clarity on whether such newly transformed 'accessibly formatted work', may be deemed as a 'new version', and accordingly be considered as qualifying as being the work of a new author.</li> <li>• Would this work be derivative or transformative-subject to resale.</li> <li>• Non profit??</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
The Author	<ul style="list-style-type: none"> <li>• Does not support exceptions and limitations.</li> <li>• Clause 5- Remove 6A(4) (d) "A cooling off period" will not work within industry due to the amount invested in the exploitation of a work.</li> <li>• Not in support of retrospectivity.</li> <li>• Clause 1- Definition of visual artistic work should be broadened to include paintings, collages, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware, photographs and plastic creations on audiovisual or digital media.</li> <li>• Clause 27-Need Civil remedies.</li> <li>• Website blocking of sites known to be committing any of the offences listed in S.27(5A) this should sit alongside the criminal penalties.</li> <li>• Statutory damages for any right holder who has had their work infringed due to any of the offences listed in S.27(5A) this should sit alongside the criminal penalties.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
UNISA-Professor Tana Pistorious	<ul style="list-style-type: none"> <li>• Clause 1-Definition too narrow. May exclude works that are important for South Africa. Works of visual art include, but are not limited to, the following: (a) artists' books;</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>



	<p>(b) batiks;  (c) carvings;  (d) ceramics; etc</p> <p>Is there a policy objective that supports the adoption of a narrow definition?</p> <ul style="list-style-type: none"> <li>• Clause 5- should refer to an equal division between the author and the copyright owner. This is in line with international best practice.</li> <li>• Literary works are excluded from the cooling-off provisions in the Electronic Communications and Transactions Act 25 of 2002.</li> <li>• Retrospective application should pass the rationality test.</li> <li>• Retrospectivity not necessary.</li> <li>• Concern over the phrase copyrighted work-implies registration like in the US.</li> <li>• Clause 7- in principle support reciprocal application.</li> <li>• Clause 7B should be amended to also provide for the following: <ul style="list-style-type: none"> <li>• A minimum resale price that will attract the resale royalty payment should be set;</li> <li>• The resale right should be managed collectively (through a collecting society);</li> <li>• The resale royalty should only be payable for sales involving the commercial resale of works of art through art dealers and other professionals that trade in the art market;</li> <li>• The resale right should not be applicable to the sale between private parties (for example between private art collectors);</li> <li>• A provision should be inserted to provide clarity on who should pay the designated person (artist or collecting society); and</li> <li>• The artist should have the right to access</li> </ul> </li> </ul>	
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	<p>information regarding the sale of her works of art.</p> <ul style="list-style-type: none"> <li>• Clause 9- The author of an audio-visual work is generally the producer and the copyright owner is the production house.</li> <li>• Should be amended to address the legislative amendments introduced by the Performance Protection Bill, 2016.</li> <li>• Proposed section 8A should implement the Beijing Treaty on Audio-visual Performances-redraft clause.</li> <li>• Clause 11-No reference to a log sheet.</li> <li>• Clause 15-unclear on what it refers to. It is unclear if this amendment meant to introduce a user-generated content (UGC) exception for artistic works or a panorama exception that includes commercial use.</li> <li>• What is meant by the phrase "as is necessary for that commission"?</li> <li>• How will this proposed amendment address the concerns outlined by the producers of audio-visual works and professional photographers?</li> <li>• The proposed section 21(1)(c) should be deleted.</li> <li>• Clause 22-does not address needs of photographers and producers. Proposed clause should be deleted.</li> </ul>	
Universities SA	<ul style="list-style-type: none"> <li>• Supports the exceptions and limitations in the Bill.</li> <li>• Exception for computer programme has been removed-why.</li> <li>• Clause 1-definition acceptable.</li> <li>• Clauses in 5,7 and 9- create an unprecedented</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<p>form of resale royalty right for the sale of all literary and musical works. Prevents or restricts the sale of works, particularly in the form of second-hand educational works, which are necessary and important in a developing country.</p> <ul style="list-style-type: none"> <li>• Not in supports of retrospective application.</li> <li>• Clause 9- Provides adequate contractual protection for authors.</li> <li>• Clause 11-imprisonment sentence is draconian.</li> <li>• Clause on log sheets is reasonable.</li> <li>• Clause 12- apply exclusive rights to the signals only, and not to the works carried over those signals.</li> <li>• Clause 15- clause should remain in the Bill but should not be restricted only to incidental use. It should be broadened to ensure that creators may include copyright works such as public historical buildings, sites, statues, sculptures, landmarks, etc. in their new creations, e.g. in photographs, films, videos, articles, exhibitions, posters, or in printed or electronic educational material, or on educational websites.</li> <li>• Clause 22-cumbersome and problematic.</li> <li>• If a commissioned work has not been used within a 3 year period from date of signing of the commission, then the copyright should either revert to the creator, alternatively, the creator should be granted a non-exclusive licence by the commissioner to enable the creator to exploit the work and benefit from royalties for uses unrelated or not in competition with the commissioner's rights.</li> <li>• Clause 25- a fair clause as it is in compliance</li> </ul>	
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	<p>with the reciprocity obligations (“most-favoured-nation treatment”) in the Berne Convention and TRIPS Agreement, and will prevent ongoing one-way payments from our country to foreign countries without receiving royalties from foreign countries.</p> <ul style="list-style-type: none"><li>• Transitional period for CS- should be reduced to 12 months, with the option to extend once for another 6 months. If an extension is required, a written motivation setting out reasons for extension would need to be submitted to the Commission.</li><li>• Pay-outs of royalties should not be later than 12 months. Collecting Societies are generally members of international bodies and they have Boards who set policies and procedures governing the collection and distribution of royalties.</li><li>• Unpaid/unclaimed royalties should be invested in the local cultural industries through a Development Trust for creators and authors.</li><li>• Clause 27- recommended fines are draconian and the amount could far exceed the seriousness of the infringement. The fine should be proportionate to the infringement and actual harm suffered by the copyright owner.</li><li>• as Section 13 (4) (in the Current Copyright Regulations of 1978) provides indemnity for libraries and archives, for unsupervised use of reproducing equipment located on their premises, so Clause 27: Section 27(6) should provide an indemnity or safe harbours in the digital environment, for libraries, archives, museums, galleries, cultural organisations, educational and research institutions and</li></ul>	
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	<p>entities serving disabled communities, as well as carriage service providers.</p> <ul style="list-style-type: none"> <li>• Clauses 29 and 30- An additional requirement for eligibility should be that the individual does not have a criminal record.</li> <li>• Until such time as the contradictory and/or conflicting clauses and problems between these two pieces of legislation are resolved, it would be difficult to refer only to the IPLAA, 28, 2013, in this Clause 37. If for any reason, the latter Bill supersedes the IPLAA, or is enacted as a second TK Act, then this would render the wording in Clause 37 incorrect.</li> </ul>	
US Chamber of Commerce	<ul style="list-style-type: none"> <li>• Not in support of the exceptions and limitations.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted.</li> </ul>
VANSA	<ul style="list-style-type: none"> <li>• Clause 1- Definition of visual art excludes sound art NB need to define Artistic</li> <li>• Works in original bill Section 1(1) to address the addition of Visual Artistic Works Clause 1, par (c): Definition of commercial work – not clear enough, take out word commercialised artistic work.</li> <li>• Clause 15: Section 15 (ii): Panorama rights and incidental use. Discourages work in</li> <li>• the public sphere.</li> <li>• Retrospectivity applicable to re sale post passing of the Bill.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>
Walker Scott	<ul style="list-style-type: none"> <li>• RRR is not a copyright matter and there should not be drafted into copyright law.</li> <li>• RRR should have its own separate legislation because RRR is an inalienable right while copyright is an automatic legal right created by law.</li> <li>• Crucial clauses that would make this Bill practical and fair have been omitted.</li> <li>• The Bill as it is will not be implementable.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>

	<ul style="list-style-type: none"> <li>• A petition list of concerned visual artists and gallery owners to have RRR removed from the Bill has been attached.</li> <li>• Section 2 of the French separate RRR legislation has been attached together with its English translation.</li> <li>• RRR should not be one side and should not be vague.</li> <li>• A sliding scale is used in France.</li> <li>• The separate proposed legislation should address firstly, which art sales will draw resale rights and which conditions will entitle an artist to receive the RRR royalty; party liable to pay RRR; whether or not art dealers will pay twice for the same work; wherein the originality and range of art works are defined.</li> </ul>	
WITS Digital Arts	<ul style="list-style-type: none"> <li>• Games (including analogue and or board games, interactive stories, cybertexts, VR/ AR content, and video games) are not explicitly classified in other statutes, including the Copyright Act. The current Copyright Act assumes that video games fall under the category of computer programmes. Such outdated legislation needs to be revised urgently.</li> <li>• Reinstatement of the exceptions for computer programs which were in the original 2017 Bill.</li> <li>• Clause 1-acceptable.</li> <li>• Amend definition of audio visual work to include games.</li> <li>• Supports submissions of USAF and Recreate ZA and IESA.</li> <li>• Supports exceptions and limitations.</li> <li>• Clause 22- Authors and creators should have rights to use their own works for purposes other than for the commissioned purposes.</li> </ul>	<ul style="list-style-type: none"> <li>• The contents have been noted.</li> </ul>



	<ul style="list-style-type: none"><li>• If a commissioned work has not been used within a 3-year period from date of signing of the commission, then the copyright should revert to the creator. The Act should not create ownership rights in the commissioner of the work by default. The Commissioner should only receive a licence to use the work for the purpose of the Commission. (games referenced)</li></ul>	
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