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**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

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The documents are available on Parliament's website: www.parliament.gov.za

COMMITTEE REPORTS

National Assembly

1. Second Report of the Portfolio Committee on Trade and Industry on the President's reservations regarding the Copyright Amendment Bill, dated 10 June 2022

The Portfolio Committee on Trade and Industry, having reconsidered the Copyright Amendment Bill [B13B-2017] (retagged as a sec 76 Bill) (*Announcements, Tablings and Committee Reports*, 18 June 2021), and following its report to the National Assembly (*Announcements, Tablings and Committee Reports*, 19 May 2021, pp 89-91) on how it intended to address the President's reservations on the constitutionality thereof (*Announcements, Tablings and Committee Reports*, 24 June 2020, pp 3-13), reports as follows:

The Bill seeks to amend the Copyright Act, 1978 (Act No. 98 of 1978), so as to define certain words and expressions; to allow for further limitations and exceptions regarding the reproduction of copyright works; to provide for the sharing of royalties in copyright works; to provide for the payment of royalties in respect of literary, musical, artistic and audiovisual works; to provide for resale royalty rights; to provide for recordal and reporting of certain acts; to provide for the accreditation of collecting societies; to provide for a mechanism for settlement of disputes; to provide for access to copyright works by persons with disabilities; to provide for the licensing of orphan works; to strengthen the powers and functions of the Copyright Tribunal; to provide for prohibited conduct in respect of technological protection measures; to provide for prohibited conduct in respect of copyright management information; to provide for protection of digital rights; to provide for certain new offences; and to provide for matters connected therewith.

The President's reservations referred, among others, to the following:

1. The "fair use" provisions as amended had not been put out for further public comment.
2. The copyright exceptions might constitute reasonable grounds for constitutional challenges.
3. The Bill might not comply with international treaty obligations specifically in relation to the World Intellectual Property Organization (WIPO) Copyright Treaty, the WIPO Performance and Phonograms Treaty, and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

A. Process followed by the Committee on the Copyright Amendment Bill

On 1 June 2021, the National Assembly adopted the Committee's report in which the Committee outlined how it intended to correct any procedural defect (*Minutes of Proceedings, National Assembly*, 1 June 2021).

On 4 June 2021, the Committee placed adverts in national and regional newspapers inviting stakeholders and interested parties to submit written submissions with reference only to clause 13 (sections 12A, 12B, 12C and 12D), clause 19 (section 19B) and clause 20 (section 19C) of the Copyright Amendment Bill [B13B-2017].

The Committee also invited stakeholders and interested parties to submit written submissions with reference to the alignment of the Copyright Amendment Bill [B13B-2017] with the obligations set out in international treaties. The Committee received 91 submissions in this regard.

Furthermore, in preparation for the public hearings, the Committee held a workshop on 3 and 4 August 2021 to provide the new members of the Committee with a conceptual framework of copyright and related rights, with a focus on the artist resale right (resale royalty right in the Copyright Amendment Bill [B13B-2017]) and performers' rights for sound recordings and audiovisual works. The workshop also covered key theoretical concepts and practices in these areas, as well as the international framework for protecting copyright and related rights.

On 11 and 12 August 2021, the Committee held public hearings to consider the submissions received in relation to the Committee's call in respect of the President's reservations.

The submissions received from stakeholders on the President's reservations were substantive in nature and raised a number of complex legal and policy matters for the Committee and the Department of Trade, Industry and Competition to consider. This required careful consideration given the international reach, and the impact on domestic constituencies, as well as to ensure that the process was constitutionally sound.

In light of the above, the Minister of Trade, Industry and Competition submitted a letter requesting that the Department be afforded additional time to consider the complex legal and policy matters raised in the submissions in order to provide an informed response in line with the constitutional parameters of the process.

On 11 and 12 November 2021, the Committee received a response with regard to the oral and written submissions received in relation to the President's reservations from the Department and Parliament's Constitutional and Legal Services Office respectively.

On 16 November 2021, informed by the inputs received from the Department and Parliament's Constitutional and Legal Services Office, and its deliberations, the Committee determined that it may be required to seek permission from the National Assembly to consider matters that fall outside the scope of the Amendment Bill. These matters would be permissible notwithstanding the limitations of the process, as it was within the scope of the reservation pertaining to alignment with international treaties. The Committee resolved that Members should be given an opportunity to consult their respective party caucuses on these clauses before taking final positions in this regard.

The additional provisions to be considered were as follows:

- New definitions related to personal copies, to exceptions for persons with a disability, and to broadcasting; and
- Making the new exclusive rights of 'communication to the public', 'making available' and 'distribution' applicable to published editions and computer programmes.

On 19 November 2021, the Committee adopted its report seeking permission from the National Assembly in terms of Assembly Rule 286(4)(c) for it to amend other provisions of the Copyright Act.

Furthermore, the Committee informed by its subsequent deliberations resolved on 30 November 2021 that, subject to the National Assembly granting the Committee permission to amend other provisions of the Copyright Act, it would advertise the new clauses, as well as re-advertise some existing clauses on which material amendments had been proposed, and call for further submissions in this regard.

The additional provisions to be considered were as follows:

- New definitions: ‘authorized entity’; ‘broadcast’; and ‘lawfully acquired’;
- Clause 1(*i*): The definition of ‘technological protection measure’ due to the inclusion of ‘product’ and ‘design’ and the deletion of paragraph (*b*);
- The amended definition of ‘technological protection measure circumvention device or service’;
- New clause: Amendments to sections 11A and 11B: Making the new exclusive rights of ‘communication to the public’, ‘making available’ and ‘distribution’ applicable to published editions and computer programmes;
- Clause 13: Section 12A(*d*): New paragraph (*d*) making the four factors in paragraph (*b*) applicable to exceptions in sections 12B, 12C, 12D, 19B and 19C;
- Section 12B(1)(*c*) and new 12B(2) providing for new provisions related to ephemeral rights;
- Section 12B(3)(*b*) providing for the factors related to the exception for personal copies to not apply to any other exception that permits a copy to be made;
- Sections 12C(2) and 12D(1)(*b*), (*c*) and (*d*): Adding the wording of the three step test as additional factors against which the exceptions must be tested;
- Clause 20: Section 19C(4): The words ‘commercial purpose’ are deleted as it is duplicating subsection (1), however removing only those words provides a different meaning to the wording of subsection(4);

- Section 19D(3) and (4)(b) incorporating treaty wording in respect of importing or exporting accessible format copies;
- Clause 27: Section 27(5A), (5B) and (5C): New subsection (5A) and (5C), and amended subsection (5B) providing for offenses in respect of digital rights, technological protection measures, and copyright management information; and
- Clause 33: Section 39(2): New subsection (2) requiring the Minister to make regulations providing for processes and formalities related to the authorization or recognition of an ‘authorized entity’.

On 1 December 2021, the National Assembly granted the Committee permission to inquire into amending other provisions of the Copyright Act (*Minutes of Proceedings, National Assembly, 1 December 2021*).

On 4 December 2021, the Committee placed adverts in national and regional newspapers inviting stakeholders and interested parties to submit written submissions with reference to abovementioned provisions. The Committee received 53 submissions in this regard.

On 6 May 2022, the Committee received a response on the written submissions received in relation to the additional provisions as captured above from the Department and Parliament’s Constitutional and Legal Services Office respectively.

The Committee continued with its deliberations on 11, 17, 18 and 25 May 2022 considering the inputs and responses from the Department and Parliament’s Constitutional and Legal Services Office to the additional clauses advertised.

On a number of clauses, no consensus was reached. In this regard, the Democratic Alliance, the Freedom Front Plus and the African Christian Democratic Party objected to the amendment of the following clauses:

- Clause 1 – Definitions of ‘accessible format copy’, ‘authorized entity’, ‘broadcast’, ‘technological protection measure’, and ‘technological protection measure circumvention device’
- Clause 5 – removal of retrospective provision and related delegations to the Minister

- Clause 7 – removal of retrospective provision and related delegations to the Minister as well as gender neutral drafting
- Clause 9 – removal of retrospective provision and related delegations to the Minister
- Clause 11 – gender neutral drafting
- New Clause – amendment of sections 11A and 11B on rights in respect of published editions and computer programmes to allow for digital works
- Clause 13 – copyright exceptions in relation to sections 12A to 12D
- Clause 19 – gender neutral drafting
- Clause 20 – gender neutral drafting and amendments to section 19D
- Clause 21 – gender neutral drafting
- Clause 23 – gender neutral drafting
- Clause 24 – gender neutral drafting
- Clause 25 – gender neutral drafting
- Clause 27 – offences in terms of communication/making available, technological protection measure and copyright management information
- Clause 29 – prohibited conduct and exceptions in respect of technological protection measures, and gender neutral drafting
- Clause 31 – gender neutral drafting
- Clause 33 – Section 39(2) regarding regulations in respect of recognising entities in terms of persons with a disability and correction of a cross reference.
- Clause 35 – gender neutral drafting

Furthermore, the Economic Freedom Fighters objected to amendment of the following clauses:

- Clause 5 – removal of retrospective provision and related delegations to the Minister
- Clause 7 – removal of retrospective provision and related delegations to the Minister as well as gender neutral drafting

- Clause 9 – removal of retrospective provision and related delegations to the Minister

B. Minority views were expressed on the following aspects contained in this report:

- The Democratic Alliance and the Freedom Front Plus were concerned that, although it is not a legislative prescript, a Socio-Economic Impact Assessment Study of the copyright exceptions in Sections 12A, 12B, 12C, 12D, 19B, 19C and 19D, as well as the other new provisions in the Bill, had not been conducted before the Bill was adopted.
- Academics provided training to the Committee to enhance Members' understanding of Copyright law. The Committee also considered inputs from all academics who made submissions during the call for comments. The Democratic Alliance was, however, of the view that the Committee relied too much on the Department and a specific group of academics during the process and raised this as a concern.
- The Democratic Alliance was of the view that communication from stakeholders, received after the period for submissions on the Bills were closed, that had been withheld was a concern. The Democratic Alliance was of the view that communication from stakeholders to the Chairperson had been distributed to the Committee after the clause by clause on the Bill had been finalised.
- The Democratic Alliance expressed a concern that parties had not been given sufficient opportunity to make submissions with regard to the option available to the Committee, as expressed in Rule 203(3)(c), which would have allowed the Committee to recommend to the House that it should rescind its previous decision to pass the Bill, and reject the Bill. The Committee had considered a discussion on, and proposal to proceed under paragraph (c), as well as the proposal to proceed under paragraph (b), which allows for the Bill to be amended. The Committee had voted to amend the Bill and not to reject it.
- The Freedom Front Plus was of the view that the Bill is fundamentally flawed and that a clause by clause consideration of amendments to address the President's reservations would not enhance the Bill further. In light of the above, it had recommended that the Committee

should have opted to apply Rule 203(3)(c) recommending to the House that it should rescind its previous decision to pass the Bill, and reject the Bill.

- The Freedom Front Plus disagreed with the Committee that the consultation periods had been sufficient, and was of the view that the periods, which they view as too short given the complex nature of the Bill, had inhibited members of the public to comment. It expressed a concern that the Bill may face a Constitutional Court challenge in this regard.
- The Economic Freedom Fighters was of the view that the deletion of the retrospectivity clause from the Bill would result in the continuation of the exploitation of artists, singers and performers guaranteeing that they would continue to live in poverty and die as paupers. The Bill did not adequately address the plight of actors, as currently actors are not earning royalties. This Bill does not correct the fact that actors are freelancers and not workers hence they are not protected by the Labour Relations Act, 1995 (Act No. 66 of 1995).
- The Economic Freedom Fighters also expressed concern at the process being limited by the Committee in terms of Joint Rule 203.

C. Recommendation

The Portfolio Committee on Trade and Industry recommends that the House adopts this report and approves the second reading of the Copyright Amendment Bill [B13C-2017].

The Democratic Alliance and Freedom Front Plus supported the report as an accurate reflection of the Committee's proceedings on the Bill. However, they do not support the Bill.

The Economic Freedom Fighters abstained.

2. Second Report of the Portfolio Committee on Trade and Industry on the President's reservations on the Performers' Protection Amendment Bill, dated 10 June 2022

The Portfolio Committee on Trade and Industry, having reconsidered the Performers' Protection Amendment Bill [B24B-2016] (retagged as a sec 76 Bill) (*Announcements, Tablings and Committee Reports*, 18 June 2021) and following its report to the National Assembly (*Announcements, Tablings and Committee Reports*, 19 May 2021, p 89-91) on how it intended to address the President's reservations on the constitutionality thereof (*Announcements, Tablings and Committee Reports*, 24 June 2020, pp 3-13), reports as follows:

The Bill seeks to amend the Performers' Protection Act, 1967 (Act No. 11 of 1967) so as to insert, delete or substitute certain definitions; to provide for performers' economic rights; to extend moral rights to performers in audiovisual fixations; to provide for the transfer of rights where a performer consents to fixation of a performance; to provide for the protection of rights of producers of sound recordings; to broaden the restrictions on the use of performances; to extend the application of restrictions on the use of performances to audiovisual fixations; to provide for royalties or equitable remuneration to be payable when a performance is sold or rented out; to provide for recordal and reporting of certain acts and to provide for an offence in relation thereto; to extend exceptions from prohibitions to audiovisual fixation and sound recordings and include exceptions provided for in the Copyright Act, 1978 (Act No. 98 of 1978); to provide for the Minister to prescribe compulsory and standard contractual terms as well as guidelines for a performer to grant consent under this Act; to provide for prohibited conduct and exceptions in respect of technological protection measures and copyright management information respectively; to provide for further offences and penalties; to substitute certain expressions; to provide for transitional provisions; and to provide for matters connected therewith.

The President's reservations referred, among others, that the Bill may not comply with international treaty obligations specifically in relation to the World Intellectual Property Organization Performance and Phonograms Treaty.

A. Process followed by the Committee on the Performers' Protection Amendment Bill

On 1 June 2021, the National Assembly adopted the Committee's report in which the Committee outlined how it intended to correct any procedural defect (*Minutes of Proceedings, National Assembly*, 1 June 2021).

On 4 June 2021, the Committee placed adverts in national and regional newspapers inviting stakeholders and interested parties to submit written submissions with reference to the alignment of the Performers' Protection Amendment Bill [B24B-2016] with the obligations set out in international treaties. The Committee received 91 submissions in this regard.

Furthermore, in preparation for the public hearings, the Committee held a workshop on 3 and 4 August 2021 to provide the new members of the Portfolio Committee on Trade and Industry with a conceptual framework of copyright and related rights. One of the focus areas was in respect of performers' rights in respect of sound recordings and audiovisual works. The workshop also covered key theoretical concepts and practices in these areas, as well as the international framework for protecting copyright and related rights.

On 11 and 12 August 2021, the Committee held public hearings to consider the submissions received in relation to the Committee's call in respect of the President's reservations.

The submissions received from stakeholders on the President's reservations were substantive in nature and raised a number of complex legal and policy matters for the Committee and the Department of Trade, Industry and Competition to consider. This required careful consideration given the international reach, and the impact on domestic constituencies, as well as to ensure that the process going forward was constitutionally sound.

In light of the above, the Minister of Trade, Industry and Competition submitted a letter requesting that the Department be afforded additional time to consider the complex legal and policy matters raised in the submissions in order to provide an informed response in line with the constitutional parameters of the process.

On 11 and 12 November 2021, the Committee received a response with regard to the oral and written submissions received in relation to the President's reservations from the Department and Parliament's Constitutional and Legal Services Office respectively.

On 19 November 2021, the Committee adopted its report seeking permission from the National Assembly in terms of Assembly Rule 286(4)(c) for it to amend other provisions of the Copyright Act. As certain clauses of the Performers' Protection Amendment Bill [B24B-2016] are subject to the promulgation of the Copyright Amendment Bill [B13B-2017], the Committee agreed that it would consider both Bills simultaneously. Thus, the consideration of the Performers' Protection Amendment Bill [B24B-2016] was subject to the conclusion of the process with respect to the Copyright Amendment Bill [B13B-2017].

On 1 December 2021, the National Assembly granted the Committee permission to inquire into amending other provisions of the Copyright Act (*Minutes of Proceedings, National Assembly, 1 December 2021*).

On 4 December 2021, the Committee placed adverts in national and regional newspapers inviting stakeholders and interested parties to submit written submissions on the additional proposed provisions to the Copyright Act. The Committee received 53 submissions in this regard.

On 6 May 2022, the Committee received a response with regard to these written submissions received from the Department and Parliament's Constitutional and Legal Services Office respectively.

The Committee continued with its deliberations on 11, 17, 18 and 25 May 2022 considering the inputs and responses from the Department and Parliament's Constitutional and Legal Services Office to the additional clauses advertised.

On 8 June 2022, the Committee formally considered the amendments to the Performers' Protection Amendment Bill [B24B-2016], as a result of the President's reservations. On a number of clauses, there had been no consensus reached. In this regard, the Democratic Alliance, the Freedom Front Plus and the African Christian Democratic Party objected to the amendment of the following clauses:

- Clause 2 – gender neutral drafting
- Clause 3 – remuneration in terms of performers in relation to audiovisual works and sound recordings, as well as gender neutral drafting
- Clause 4 – gender neutral drafting
- Clause 5 – gender neutral drafting
- Clause 6 – correcting a typographical error
- Clause 7 – removal of reference to the Electronic Communications and Transactions Act and gender neutral drafting

B. Minority views were expressed on the following aspects contained in this report:

- The Democratic Alliance expressed a concern that parties had not been given sufficient opportunity to make submissions with regard to the option available to Committee as expressed in Rule 203(3)(c) which would have allowed the Committee to recommend to the House that it should rescind its previous decision to pass the Bill, and reject the Bill. The Committee did consider a discussion on, and proposal to proceed under paragraph (c), as well as the proposal to proceed under paragraph (b), which allows for the Bill to be amended. The Committee voted to amend the Bill and not to reject it.
- The Freedom Front Plus was of the view that the Bill is fundamentally flawed and that a clause by clause consideration of amendments to address the President's reservations would not enhance the Bill further. In light of the above, it had recommended that the Committee should have opted to apply Rule 203(3)(c) recommending to the House that it should rescind its previous decision to pass the Bill, and reject the Bill.
- The Freedom Front Plus disagreed with the Committee that the consultation periods had been sufficient, and was of the view that the periods, which they view as too short given the complex nature of the Bill, had inhibited members of the public to comment. It expressed a concern that the Bill may face a Constitutional Court challenge in this regard.

- The Economic Freedom Fighters also expressed concern at the process being limited by the Committee in terms of Joint Rule 203.
- The Economic Freedom Fighters was of the view that the Bill did not adequately address the plight of actors, as currently actors are not earning royalties. Furthermore, that this Bill did not correct the fact that actors are freelancers and not workers hence they are not protected by the Labour Relations Act, 1995 (Act No. 66 of 1995).

C. Recommendation

The Portfolio Committee on Trade and Industry recommends that the House adopts this report and approves the second reading of the Performers' Protection Amendment Bill [B24C-2016].

The Democratic Alliance and Freedom Front Plus supported the report as an accurate reflection of the Committee's proceedings on the Bill. However, they do not support the Bill.

The Economic Freedom Fighters abstained.

Report to be considered.