



## **FINAL VOTING MANDATE**

**TO:** The Chairperson of the National Council of Provinces

Hon. A Masondo

**NAME OF BILL:** Copyright Amendment Bill

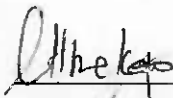
**NUMBER OF BILL:** [B13F-2017]

**DATE OF DELIBERATION:** 31 August 2023

**VOTE OF THE LEGISLATURE:**

The Gauteng Provincial Legislature supports the principle and the detail of the bill and therefore votes in favour of-

- Copyright Amendment Bill

  
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**HON. NTOMBI MEKGWE**

**SPEAKER**

**GAUTENG PROVINCIAL LEGISLATURE**

**Date:** 31 August 2023



## **ECONOMIC DEVELOPMENT PORTFOLIO COMMITTEE**

### **COMMITTEE REPORT ON THE FINAL MANDATE**

**ON THE:**

**COPYRIGHT AMENDMENT BILL [B13F-2017]**

**31<sup>st</sup> August 2023**

#### **1. INTRODUCTION**

The Chairperson of the Economic Development Portfolio Committee, Hon. William Matsheke, tables the Committee's report on the Final Mandate on the Copyright Amendment Bill [B13F – 2017].

#### **2. PROCESS FOLLOWED**

The Speaker formally referred the Copyright Amendment Bill [B13F – 2017] Section 76 with further amendments, to the Portfolio Committee on Economic Development (herein referred to as the Committee), for consideration and reporting in terms of Rule 245 (1) read with 246 (1) 247 and 248.

On Friday 4<sup>th</sup>, November 2022 the National Department of Trade, Industry and Competition made a presentation on the Copyright Amendment Bill [B13F – 2017]. Subsequent to that, the Gauteng Department of Economic Development made a presentation on the views of the Executive on matters related to the Copyright Amendment Bill [B13F – 2017]. The Permanent Delegate also attended the meeting in order to brief the Committee on the processes related to the consideration of this Bill.

In the same meeting, a research analysis focusing on the socio-economic impact of the Bill and the legal opinion were presented respectively by the Research Unit and the Legal Unit from the Gauteng Provincial Legislature.

In fulfilling its mandate, the Committee published adverts in the following newspapers:

- 10 February 2023 on the Sowetan Newspaper
- 14 February 2023 on The Star Newspaper
- 19 March 2023 on the City Press Newspaper
- 20 March 2023 on the Sowetan Newspaper

To further publicize the processing of the Copyright Amendment Bill [B13F – 2017], radio promos including interviews were undertaken in the following mainstream and community radio stations Power FM, Kasie FM, Westside FM and Enkangala FM. In addition to this, GPL social media accounts such as Facebook and Twitter were utilized to communicate the processing of the Bill.

The published advertorials, radio promotions and social media accounts enabled the Committee to request members of the public and stakeholders to attend the public hearings and make comments on the Bill. Following that, the Committee convened public hearings as follows:

- On the 16<sup>th</sup> February 2023 at Dan Tlome Mega Project in Randfontein, West Rand
- On the 24<sup>th</sup> March 2023 at the Boksburg Civic Centre, Boksburg in Ekurhuleni
- On the 31<sup>st</sup> March 2023 at the Bronkhorstspuit Community Hall, Bronkhorstspuit in Tshwane

Prior convening all the public hearings, the Portfolio Committee convened a focused stakeholder engagement session on the Bill on the 9<sup>th</sup> February 2023 at the Capital Hotel, Sandton in Johannesburg. This was to solicit views from organized formations on the proposed amendments.

The Portfolio Committee deliberated and adopted the draft report on the Negotiating Mandate of the Copyright Amendment Bill [B13F – 2017], in a meeting that convened on Thursday, 11<sup>th</sup> May 2023.

The Committee thus deliberated on and adopted the Committee's report on the Final Voting Mandate on the Bill in a meeting that convened on the 24<sup>th</sup> August 2023. However, the report was not unanimously supported by the Committee, the Freedom Front Plus raised dissenting views on the Bill. In line with the GPL Standing Rules 162 (1), (2) and (4) read together with rule 163 and 164, the Freedom Front Plus submitted a minority report reflecting dissenting views on the matter as follows:

- The FF+ considers the Copyright Amendment Bill to be poorly conceptualised and drafted, with dispossessive provisions that are unconstitutional, and that it will have a devastating effect on South Africa's creative industries.
- Whereas the FF+ recognises the many improvements proposed in the negotiating mandate, the mandate contains contradictions and preserves many of the Bill's defective provisions.
- The FF+ is concerned that the outcome of the public participation process has been prejudged by the Executive, supported by a questionable legal opinion.
- The FF+ notes that the Government has no underlying written policy and no research or impact assessment that supports the introduction of "fair use" and the Bill's extensive exceptions into South Africa's copyright law. The FF+ further notes that the document held out as a SEIAS report was not tabled with Cabinet in 2016 for its resolution to introduce the Bill to Parliament and was never published, and it failed to comply with the SEIAS Guidelines in nearly all respects.
- The six years that it has taken since the Bill was first introduced to Parliament is not a reason why it must now be passed. From the beginning, experts, the legal profession and stakeholders have repeatedly warned Government and Parliament of the Bill's defects. It is an indictment of the process that the Bill has been pushed through to proceed this far.
- The FF+ recognises and commends the Committee for the proposal in the negotiating mandate for a full economic impact assessment but holds the view that such an assessment only has value before a bill is introduced. The FF+ is concerned that an assessment after the fact will only result in a rationalisation of the Bill's dispossessive and defective provisions.
- His Excellency, the President recognised that the Bill contains provisions that may be unconstitutional because they are dispossessive or because they conflict with international treaties to which South Africa is bound or has committed itself, which is why he referred the Bill back to the National Assembly. The FF+ holds the view that the revised Bill has not addressed all his concerns.
- Accordingly, the Bill will only pass constitutional muster by implementing the necessary changes as highlighted by the President and various experts in the field.
- This Bill will as it stands, will destroy many industries and employment opportunities. For these reasons, the Bill must not be passed.

### **3. PRINCIPLES AND DETAILS OF THE BILL**

To amend the Copyright Act, 1978, so as to define certain words and expressions; to allow for further limitations and exceptions regarding the reproduction of copyright works; to provide for the sharing of royalties in copyright works; to provide for the payment of royalties in respect of literary, musical, artistic

and audio-visual works; to provide for resale royalty rights; to provide for recordal and reporting of certain acts; to provide for the accreditation of collecting societies; to provide for a mechanism for settlement of disputes; to provide for access to copyright works by persons with a disability; to provide for the licensing of orphan works; to strengthen the powers and functions of the Copyright Tribunal; to provide for prohibited conduct in respect of technological protection measures; to provide for prohibited conduct in respect of copyright management information; to provide for protection of digital rights; to provide for certain new offences; and to provide for matters connected therewith.

#### **4. OBJECTIVES OF THE BILL**

- To develop a legal framework on Copyright and related rights that will promote accessibility to producers, users and consumers in a balanced manner this includes flexibilities and advancements in the digital space that should empower all strata of the citizens of South Africa;
- To introduce provisions, which deal with matters pertaining to collective management Collecting societies will only be allowed to collect for their registered members, and all collecting societies have to be accredited with the Companies and Intellectual Property Commission CIPC;
- To deal with the protection of works and rights of authors in the digital environment;
- The Bill provides for standard contractual terms to empower authors when negotiating contracts and this will close the loophole that has resulted in unfair contractual terms that has led to creators signing away their rights;
- To introduce a Resale Royalty Right This Resale Royalty Right means that an artist could be entitled to a royalty when their original work is resold commercially;
- To introduce a fair use system for the reproduction of copyright material for limited uses or purposes without obtaining permission and without paying a fee or a royalty Furthermore, this provision stipulates the factors that need to be considered in determining whether the copyright work is used fairly;
- To provide for exceptions and limitations in education, libraries, archives and museums, computer programs;
- To provide for the availability of accessible format copies of a work to accommodate persons with disabilities and this provision extends beyond matters pertaining to the blind and includes other disabilities such as learning disabilities, dyslexia etc;
- To provide for the sharing of royalties in respect of literary, musical, artistic and audio-visual works;
- It provides for the recordal and reporting of certain acts;
- To strengthen the Copyright Tribunal so that it can deal with all Copyright and related rights matters;

- To address the rights of authors in commissioned works that includes to facilitate commercial exploitation by any person so licensed; and
- To introduce Technological Protection Measures to reduce incidents of copyright infringement.

## 5. FINAL POSITION ADOPTED BY THE COMMITTEE

After due consideration, the Economic Development Portfolio Committee in accordance with Rule 117(2)(c) read together with Rule 164 the Committee presents to this House the report on the final mandate in support of the Copyright Amendment Bill [B13F-2017] Section 76 Bill and recommends its adoption by the House.

In terms of rule 248 (2) (3) (4) and (5) read together with Section 65 of Constitution of the Republic of South Africa, the Portfolio Committee on Economic Development recommends that the House confer authority on the Gauteng Provincial Delegate to National Council of Provinces to **vote in favour** of the Copyright Amendment Bill [B13F – 2017].

## 6. ACKNOWLEDGEMENTS

Appreciation is expressed to all Members of the Committee for their commitment to the oversight and law-making process, gratitude goes to Hon. Malema, Hon. Letsoalo, Hon. Letsie-Mogale, Hon. Nkosi-Malobane, Hon. Atkinson, Hon. Badenhorst, Hon. Du Plessis, Hon. Alberts and Hon Adams. Further appreciate goes to the alternate Members of the Committee namely: Hon. Bosch, Hon. Mukwevho and Hon. Hoffman. It is an honour to lead such a hard-working team.

On behalf of the Committee, the Committee's appreciation and gratitude also goes to the following persons: Group Committee Coordinator, Mr. T. Bodibe; Researchers Mr. A. Malapane, Ms M. Makhubele; Senior Committee Coordinator Mr. T. Skosana; Committee Administrator, Ms. V. Mokubetsi; Hansard Recorder Mr. S. Minyuku; Public Participation Officer, Mr. B. Dhlomo; Service Officers, Ms. Z. Mabaso, Communications Officer Mr. T. Ndou, Senior Information Officer Ms. A. Netshivhuyu, Committee Intern, Ms T Mangole for their devoted assistance.