

Dear Honourable D Nkosi, Chairperson of the Portfolio Committee on Trade and Industry

RE: COMMENTS WITH RESPECT TO THE COPYRIGHT AMENDMENT BILL AND THE PERFORMERS' PROTECTION AMENDMENT BILL

I appreciate the opportunity given to us members of the public to comment on the two bills that were returned by the President of the Republic of South Africa after parliament voted in favour of them. To introduce myself, my name is Simphiwe Mlotshwa, I am South African citizen by birth residing in KwaThema township, Ekurhuleni Metropolitan Municipality. I am researcher by profession and I have substantial interest in the two bills, especially the Copyright Amendment Bill.

Comments

I have underlined the president's concerns with regards to the bills and I then provide my comment thereto:

Incorrect tagging of the Copyright Bill

The Bill is correctly tagged as a section 75 Bill under the Constitution as it deals with intellectual property or works copyrighted, which can be traded through contracts. However, the effect of trade on culture and related sectors are ancillary just like trade on goods and services will affect other sectors that may not be necessarily trading those goods and service. Cultural and traditional issues were addressed when the Traditional House of Traditional Leadership was consulted previously. There is no need to take the route of getting concurrence from the provincial legislatures as there are no issues affecting provincial interests directly as defined in the Constitution. Also trade is a national competency under the constitution. I thus support the Bill as it stands.

Fair use

The President raises a valid point with regards to insufficient public consultation with respect to s12A of the Copyright Bill. The committee should take caution and allow multiple voices to be heard with respect to the fair use clause.

Impermissible delegation of powers to the Minister

The President is of the view that the Minister has been given powers he/she does not have to deprive property to those people who hold works based on contracts signed under the current Copyright Act. The removal of this delegation of authority to the Minister will not assist copyright holders whose works are held by others, resulting to their current state of poverty. The Minister can and should do an impact assessment to ensure that deprivation of property for holders of works do not lead to excessive deprivation. In other words, the Minister can make regulation to ensure that there is a balancing act between the copyright holders currently experiencing poverty and holders of works under contract who will be deprived of their property. The committee should consider deliberations of the Ad Hoc committee on section 25 of the constitution to see how they are managing the process on deprivation of property owners.

The President does not motivate why he thinks the National Council of Provinces should be included in the process going forward. It is now accepted that absence of reason leads to a decision or recommendation by a public body or officials to be set aside.

Copyright exceptions and international treaties

The exceptions listed under various subsection on the Copyright Bill were inserted after extensive public consultations. It is now accepted that exceptions related education, research and so forth are acceptable under copyright legislation. Even Creative Commons are there mainly for education purpose. This is not a deprivation of property. If educators and researchers feel this will lead to a deprivation of property, they are welcomed to form their own companies where the activities of their companies will be the selling of research to the public or private bodies as it is current practice in private sectors.

The Bill should not accommodate treaties that have not been presented to parliament for ratification such as those listed by the president. Future occurrences may or may not arrive, and a Bill cannot accommodate those.

The three step process should be relooked by the committee either through Parliament legal services or by procuring the services of a constitutional expert in these matters.

Conclusion

So much time has passed since the National Assembly passed amendments to the two bills. It was a balancing act that sought to mainly correct some injustices that occurred in the past and not to unjustly deprive property to those holding it. I support and the work of the committee and wish it well.

Regards,
Simphele Mlotshwa