

9 July 2021

[REDACTED]

Our Ref: GL0117/SIP

Dear Sirs,

**Submissions on the COPYRIGHT AMENDMENT BILL (CAB) B13B-2017**  
**Submitted to: THE PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY, NATIONAL ASSEMBLY, PARLIAMENT OF RSA**  
**Submitted on behalf of: THE WRITERS GUILD OF SOUTH AFRICA**

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**A. INTRODUCTION:**

The Writers Guild of South Africa (“the Guild”) welcomes the opportunity to comment on the Copyright Amendment Bill B13B-2017 (“CAB”)<sup>1</sup>. Our submissions on CAB<sup>2</sup> are informed by the insights and experiences of our organisation’s work and involvement in the creative industries in South Africa, specifically including the dramatic works and audio-visual script spheres. The Guild represents the interests of its members and other performance writers and makes these submissions on their behalf.

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From the outset, we wish to make it clear that these submissions should be viewed as intended, being an attempt by the Guild to provide a positive contribution on CAB<sup>3</sup> to the Committee and is in no way intended as an outright reproach. It should further be noted that these submissions only address CAB,<sup>4</sup> and not the Performers Protection Amendment Bill (“PPAB”)<sup>5</sup>, as the latter does not apply to the scope of our immediate concerns.

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1 Copyright Amendment Bill B13B-2017 (“CAB”).

2 *Supra.*

3 *Supra.*

4 *Supra.*

5 Performers Protection Amendment Bill B24-2016 (“PPAB”).

40 It should further be stated that the Guild fully supports the initiative to revise the current outdated Copyright Act 98 of 1978 (the “Copyright Act”)<sup>6</sup> and agrees that this “old” act needs to be amended and aligned with international treaties and technological developments, as well as supports the initiatives proposed by CAB<sup>7</sup> in an attempt to reward copyright creators and to make works more accessible. However, we are of the humble view that CAB<sup>8</sup> was unfortunately unsuccessful in fully realising the vision of CAB,<sup>9</sup> as the legislative process to date has overlooked several opportunities for further growth, stability, investment, and development in and of the South African creative spheres. We further fear that the initial goals of CAB,<sup>10</sup> however admirable, cannot be achieved, and implementation thereof without the appropriate amendments will undoubtedly have serious repercussions on all stakeholders in the creative industry.

50 As a beacon for the African continent, South Africa has an opportunity to light the way for the rest of the continent who would undoubtedly look at South African copyright legislation, when passed, for their legislative reform. It is therefore imperative that any new copyright legislation, which we agree is necessary, is thoroughly considered and drafted with every aspect and sphere of the creative industries being taken to heart. We, as South Africans, legislators and creatives alike, have the opportunity to create a legacy through new copyright legislation of which all stakeholders can be proud.

#### **B. BACKGROUND OF THE WRITERS GUILD OF SOUTH AFRICA:**

60 The Guild replaced the South African Scriptwriters Association (SASWA) formed in 1974. We are the only professional association in South Africa with a mandate to protect, empower and develop performance writers.

A performance writer is someone who creates projects meant to be acted, sung, or spoken out loud (in other words, performed). This includes not only screenwriters who work for film and television, but also playwrights, radio writers, lyricists, computer games creators, animation writers, audio description writers, radio and TV news writers and speechwriters.

70 We aim to be a support system for the South African performance writer in the local film, television, radio, stage, animation, and new media, including internet, mobile, digital distribution, and gaming.

We are a registered Non-Profit Organisation (NPO) and Public Benefit Organisation (PBO) that is dependent on fundraising. The Guild is currently 425 members strong, made up of student, candidate, full, and corporate members:

- Student – aspirant performance writer enrolled at a legitimate learning institution;
- Candidate – an aspirant performance writer who has not yet had work produced;
- Full – a performance writer who has had work produced in any of the scope disciplines;
- Corporate – writing companies and or production houses employing staff writers.

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6 Copyright Act 98 of 1978 (the “Copyright Act”).

7 *Supra.*

8 *Supra.*

9 *Supra.*

10 *Supra.*

A constitution and a seven-member volunteer council govern our mandate. The council and part-time staff (an Executive Officer and Administrator) execute our core services:

- Professional Development – outreach programme, workshops, and non-writing skills development;
- Membership – legal advice and representation, discounted services, products, and opportunities, job alerts, WGSa Muse Awards, festivals, and markets, and learning institutions;
- 90 • Communications – online networking platform, website, social media, newsletter, and promotional materials;
- Advocacy – drafting of legislation and lobbying for IP and Copyright, right to collective bargaining, standard contracts and rates, and the establishment of a collection’s agency.

**C. LEGISLATIVE BACKGROUND:**

The legislative review of the Copyright Act<sup>11</sup> was implemented in 2015, where the initial Bill B13-2017 (the “Bill”)<sup>12</sup> was introduced to address matters pertaining to copyright in general. On 16 May 2017, the Minister of Trade and Industry introduced the initial Bill<sup>13</sup> to the National Assembly. On the same day, the Portfolio Committee on Arts and Culture had a sectoral  
100 impact briefing on the Bill<sup>14</sup> (as well as on PPAB<sup>15</sup>).

Between 30 May 2017 and 22 August 2017, the Bill<sup>16</sup> was before the Portfolio Committee on Trade and Industry for deliberation. During this time, Public Participation was afforded on the Bill<sup>17</sup> through three (3) days of public hearings held on 1, 3 and 4 August 2017 and one (1) day of key stakeholder engagement.

On 11 September 2017, the Secretary of Parliament referred the Bill<sup>18</sup> to the National House of Traditional Leaders for comments. Between 10 October 2017 and 15 November 2018, the Portfolio Committee on Trade and Industry met on thirty-two (32) occasions where they  
110 continued deliberations on the Bill.<sup>19</sup> Around this point, the revised Copyright Amendment Bill B13B-2017 (“CAB”)<sup>20</sup> was introduced and CAB<sup>21</sup> was subsequently passed by the National Assembly and forwarded to the National Council of Provinces for its concurrence on 5 December 2018.

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11 *Supra.*  
12 Copyright Amendment Bill B13-2017 (the “Bill”).  
13 B13-2017, *Supra.*  
14 B13-2017, *Supra.*  
15 *Supra.*  
16 B13-2017, *Supra.*  
17 B13-2017, *Supra.*  
18 B13-2017, *Supra.*  
19 B13-2017, *Supra.*  
20 *Supra.*  
21 *Supra.*

At the National Council of Provinces, CAB<sup>22</sup> was deliberation on three (3) occasions between 13 February 2019 and 20 March 2019, whereafter CAB<sup>23</sup> was passed by both Houses and forwarded to President Cyril Ramaphosa (the “President”) for assent on 28 March 2019, where it remained until 16 June 2020, at which instance CAB<sup>24</sup> was returned to the National Assembly (and not ascended) by the President. At this stage, the following reservations were listed by the President:

- Tagging, stating that CAB<sup>25</sup> should have been classified as a Section 76 Bill, *ie* to be considered by the National Council of Provinces (NCOP) as it may relate to trade and cultural matters;
- Retrospective and arbitrary deprivations of property in clauses 5, 7 and 9, which inserted Sections 6A(7), 7A(7) and 8A(5) in CAB<sup>26</sup>;
- The lack of public participation related to the “Fair Use” concept contained in CAB<sup>27</sup> (*\*our emphasis*);
- Impermissible delegation of legislative power to the Minister in clauses 5, 7 and 9 of CAB<sup>28</sup>;
- The copyright exceptions, as some clauses may constitute arbitrary deprivation of property, which may affect the right to freedom of trade, occupation, and profession; and
- The question of CAB’s<sup>29</sup> compliance with international treaties and the implications thereof.

Subsequently, CAB<sup>30</sup> returned to the National Assembly where, between 18 August 2020 and 26 August 2020 it was before the Committee on Trade and Industry for deliberation on three (3) occasions, thereafter before the Committee on Sports, Arts and Culture on 4 September 2020, whereafter it returned to the Committee on Trade and Industry who deliberated on CAB<sup>31</sup> on 5, 12 and 14 May 2021, respectively.

Thereafter CAB<sup>32</sup> was recommitted to the Portfolio Committee on Trade and Industry, by the National Assembly, and referred to the Joint Tagging Mechanism on 1 June 2021. Subsequently, on 4 June 2021, The Portfolio Committee on Trade and Industry invited 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 CAB<sup>33</sup> (*ie*, those Sections pertaining to *inter alia* the “Fair Use” doctrine) – with the provided deadline of 9 July 2021.

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22 *Supra.*

23 *Supra.*

24 *Supra.*

25 *Supra.*

26 *Supra.*

27 *Supra.*

28 *Supra.*

29 *Supra.*

30 *Supra.*

31 *Supra.*

32 *Supra.*

33 *Supra.*

**D. SPECIFIC CONCERNS IN RESPECT OF CAB (B13B-2017):**

The Guild wishes to commend the Committee on its efforts and significant headway made with CAB,<sup>34</sup> as it has undoubtedly come a long way from the initially proposed Bill.<sup>35</sup> We further wish to acknowledge that CAB<sup>36</sup> has several aspirations that, with the appropriate revision, has the potential to positively impact certain areas of the creative industry. That said, it should be recognized that CAB<sup>37</sup> shall remain flawed for as long as it remains a “patched-up and repaired” version of the initial Bill,<sup>38</sup> which could have been drafted in a more adequate and balanced manner and exhibited a misinterpretation of key copyright concepts. It is our opinion that despite the Committee’s best efforts and intentions, and albeit that CAB<sup>39</sup> is a significant improvement in the Copyright Act<sup>40</sup> and initial Bill,<sup>41</sup> the flaws of the initial Bill,<sup>42</sup> unfortunately, trickled down into CAB.

Now, although we believe that there are various concerns with the proposed amendments envisioned through CAB<sup>43</sup> (including the introduction of vaguely defined terms and concepts<sup>44</sup>, including “*audiovisual works*”<sup>45</sup> and “*visual artistic works*”, and the uncertainty surrounding the proposed Copyright Tribunal and its powers – to name but a few), in light of the Committee’s call for submissions being specifically partial to the relevance of clauses 13, 19 and 20,<sup>46</sup> we shall mainly focus on “Fair Use” as envisioned through clauses 13, 19 and 20 in these submissions. Accordingly, we respectfully submit the following:

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34 *Supra.*

35 B13-2017, *Supra.*

36 *Supra.*

37 *Supra.*

38 B13-2017, *Supra.*

39 *Supra.*

40 *Supra.*

41 B13-2017, *Supra.*

42 B13-2017, *Supra.*

43 *Supra.*

44 The importance of having clear and concise definitions to any legislation, specifically one as complex as CAB, is paramount and undisputed, especially as it alleviates any uncertainty if appropriately drafted. The Guild is accordingly of the humble view that the current definitions as proposed by CAB lacks clarity and leaves the rest of CAB open to interpretation on this front. It is therefore clear that the revision and inclusion of adequate definitions in CAB would likely address (at least to an extent) some of the concerns currently held.

45 The Guild humbly submits that the definition of “*audiovisual works*” as proposed by CAB is incomplete and lacks the clarity necessary for this concept, specifically considering its affiliation with the “Fair Use” doctrine. Currently, it would appear that CAB does not specifically include screenwriters (who essentially form the core constituency of the Guild) in its definitions, and subsequently excludes such creators from being viewed as “authors” under CAB. This is particularly evident therein that the “authors” of audiovisual works are defined in CAB as the person responsible for the arrangement of such a work (ultimately being the producer). There thus exists an opportunity to possibly further address and clarify the aspect of authorship and ownership in such works through CAB, which we urge the Committee to consider – possibly through *inter alia* revisiting the purpose and consequence of Section 12B(4) of CAB, *Supra.*

46 Seeking to introduce Sections 12A, 12B, 12C, 12D, 19B and 19C of CAB, *Supra.*, and specifically as far as such relates to the “Fair Use” doctrine.

180 The main concern shared amongst our members and the Guild<sup>47</sup> is the indisputable fact that the “Fair Use” doctrine provides the Court with disproportionately broad authority to determine whether any instance of unauthorised use of a copyrighted work is permissible as being fair, and to do so on an *ad hoc* basis in the Court’s discretion. This further poses a concern where judges not having ample expertise in copyright law and practice may be found to consider instances of such unauthorised use which may lead to contradicting and potentially inaccurate<sup>48</sup> precedents being created.<sup>49</sup> Furthermore, with the timeframes associated with any court proceedings in South Africa, appropriate and accurate precedents on the “Fair Use” doctrine will likely take several years to be established, and even longer to be refined.<sup>50</sup> There is a further argument to be made that the adoption of the “Fair Use” doctrine shall result in a less effective, less principled and less democratic approach to the envisioned (and necessary) South African copyright reform.<sup>51</sup>

190 The concept of “Fair Use” in the South African context (*\*our emphasis*) further lacks the legal certainty that was provided through the concept of “Fair Dealings” contained in the current Copyright Act<sup>52</sup>. This is entrenched therein that there is no clear guidance on the likely instances of “Fair Use”. Furthermore, the question of such being a successful exclusion to unauthorised use can only be determined after any instance (and the conclusion) of formal litigation on copyright infringement.<sup>53</sup> This uncertainty on the question of “Fair Use” as an exception to copyright will undoubtedly result in an extensive and excessive need for litigation, which would ultimately be at the detriment of the authors and other copyright creators who do not have the financial resources to pursue formal litigation in every instance of unauthorised use (*\*our emphasis*).<sup>54</sup>

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- 47 Supported through several open letters and other documents from the Guild and its members, addressed to the President and the National Assembly (attached herein as annexures i to viii).
- 48 It is an undisputed fact that our honourable courts provide flawed judgements – a concept accepted and embodied through the judicial review and appeal processes. Furthermore, judges do not determine the cases before them.
- 49 See Nimmer “‘Fairness of them all’ and other fairy tales of fair use” 2003 *Law and Contemporary Problems* 267 and 278, and Beebe “An empirical study of US copyright fair use opinions, 1978-2005” 2008 *University of Pennsylvania Law Review*.
- 50 It is further unreasonable to expect South African courts to rely on foreign precedents when dealing with the question of “Fair Use”, not only based the evident uncertainty on “Fair Use” in such foreign jurisdictions, but also on the fact that the South African copyright landscape is vastly different to that of those foreign jurisdictions.
- 51 See also Sookman and Glover “Why Canada should not adopt fair use: a joint submission to the copyright consultations” 2009 *Osgoode Hall Review of Law and Policy* 163.
- 52 It should be noted that the Guild does not necessarily support the current “Fair Dealing” approach of the Copyright Act, and that the concerns raised against the “Fair Use” doctrine should not be viewed as an argument for “Fair Dealing”. To the contrary, the Guild accepts the need for exceptions to copyright to be brought into the current landscape not addressed by the outdated Copyright Act. However, we humbly submit that “Fair Use” as envisioned through CAB may not be an appropriate way in which this is achieved in the unique and diverse South African creative landscape.
- 53 See Lessig *Free Culture: The Nature and Future of Creativity* (2004) 187 wherein the author makes the statement that “*Fair use in America simply means the right to hire a lawyer to defend your right to create (\*our emphasis). And as lawyers love to forget, our system for defending rights such as fair use is astonishingly bad — in practically every context, but especially here. It costs too much, it delivers too slowly, and what it delivers often has little connection to the justice underlying the claim. The legal system may be tolerable for the very rich. For everyone else, it is an embarrassment to a tradition that prides itself on the rule of law.*”
- 54 This is supported by an empirical study done by Beebe on “Fair Use” cases in the United States reported between 1978 and 2005. This study indicated that, during its 28-year scope, there were

200 Further, although there exist several views that the proposed inclusion of “Fair Use” will be a so-called *hybrid* between the current Copyright Act’s<sup>55</sup> concepts of “Fair Dealing” and the foreign doctrine of “Fair Use” in light of specific exceptions identified in CAB<sup>56</sup> (a view not shared by the Guild), the open-ended nature of exceptions proposed through CAB<sup>57</sup> unarguably points only towards “Fair Use” in its own right.

210 Furthermore, the principles of “Fair Use”, being at its core a foreign notion, do not find expression in South African copyright law and practice as envisioned by CAB.<sup>58</sup> In short, in the humble view of the Guild, the “Fair Use” doctrine is not appropriate or adaptable for inclusion in the South African copyright landscape, nor South African copyright legislation. It is, therefore, the opinion of the Guild, based not only hereon but on the other submissions made herein, that the concept of “Fair Use” as envisioned by CAB<sup>59</sup> simply does not serve the greater interest of the South African public or South African creatives and copyright creators – which should always remain at the core of any legislation (*\*our emphasis*).

220 Herein further, not only pertaining to the question of exceptions (including “Fair Use”), but also the President’s reservation on CAB’s<sup>60</sup> compliance with international treaties<sup>61</sup> such as the Berne Convention<sup>62</sup> and TRIPS<sup>63</sup> – to which South Africa is a signatory, certain mentioned treaties<sup>64</sup> provide valid exceptions to copyright. Although the Guild recognises, and in no way disputes the necessity for certain exceptions, such exceptions must meet the thresholds set by the mentioned treaties<sup>65</sup> – more specifically the so-called “*three-step test*”.<sup>66</sup> This test entails that an exception to copyright must meet three requirements, which are to be applied sequentially and cumulatively, before being accepted, namely:

- i) they must cover only certain special cases;<sup>67</sup>
- ii) they must not conflict with the normal exploitation of the work; and
- iii) they must not unreasonably prejudice the legitimate interests of the rightsholder (*\*our emphasis*).

Thus, in addition to the above concerns specifically related to the “Fair Use” doctrine encompassed in CAB,<sup>68</sup> it overreaches in granting several further specific exceptions with are

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215 federal cases, which yielded 306 judgments concerning “Fair Use”; See Beebe *Supra* 565 herein.

55 *Supra*.

56 *Supra*.

57 *Supra*.

58 *Supra*.

59 *Supra*.

60 *Supra*.

61 See also Samuelson and Hashimoto “Is the US fair use doctrine compatible with Berne and TRIPS obligations?” 2018 SSRN.

62 The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention).

63 The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

64 *Supra*.

65 *Supra*.

66 As contained in article 9(2) of the Berne Convention as extended by article 13 of TRIPS, which is widely viewed as the international norm for limitations on copyright.

67 It is arguable that the uncertainty created by the “Fair Use” doctrine will fail this first requirement set by the treaties, *Supra*. This, in itself, further emphasises the President’s reservation (share by the Guild) on CAB’s compliance with international treaties.

68 *Supra*.

230 all to the ultimate detriment of authors and copyright owners, far exceeding reasonableness  
 in such exceptions. We are further of the opinion that the exceptions (including “Fair Use”) fall  
 short of compliance with all three of the above requirements (which are obligations placed on  
 member states) and as such does not meet the threshold envisioned by the said treaties.<sup>69</sup>  
 Further expanding on the concern that CAB<sup>70</sup> may impact South Africa’s compliance with  
 international treaties<sup>71</sup> and the economic impact it would ultimately have on the creative  
 sectors. We are of the humble view that the proposed Section 12B(4)<sup>72</sup> should be repealed for  
 two main reasons. The first being that the provision is placed in a proposed section that deals  
 with specific exceptions from copyright protection. However, Section 12B(4)<sup>73</sup> is not an  
 exception to the exclusive right but rather a presumption of transfer of the right to broadcast  
 240 in the case of an authorisation to use a literary work (for example a script) as the basis for the  
 making of an audiovisual work. The second is that such a *presumption rule* is a direct violation  
 of the international treaty<sup>74</sup> obligations of South Africa – as elaborated below.

According to Article 14 *bis*(2)(b) of the Berne Convention<sup>75</sup>, countries are allowed to provide<sup>76</sup>  
 that when an author authorises to contribute to a cinematographic work (*ie* makes an  
 agreement regarding a script to a film or other audiovisual work), there is a presumption that  
 such an author cannot object to certain kinds of exploitation, including broadcasting and the  
 like. However, there are several conditions for such a *presumption rule* to apply. Firstly, such  
 a rule is only applicable in countries where the producer is not considered the author of the  
 cinematographic work, which is not the case in South Africa.<sup>77</sup> Secondly, the rule does not  
 250 apply to pre-existing works such as literary works). Third, Article 14 *bis*(3) of the Berne  
 Convention<sup>78</sup> contains an exception to Subsection (2)(b).<sup>79</sup> According to Subsection (3)<sup>80</sup> the  
 rule, as a starting point, is *inter alia* not applicable to “*authors of scenarios, dialogues*”.<sup>81</sup>

Further to our specific concerns pertaining to the “Fair Use” doctrine and South Africa’s  
 international treaty obligations above, and referring to the annexed open letters<sup>82</sup>, additional

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69 There is no reason to deliberate on the indisputable fact that South Africa not meeting its obligations under the respective treaties, *Supra*, will have severe implications and consequences on our country’s international standing.

70 *Supra*.

71 *Supra*.

72 CAB, *Supra*.

73 CAB, *Supra*.

74 *Supra*.

75 *Supra*.

76 Through domestic legislation.

77 In South Africa, the producer of a cinematographic work is considered the author of such work. See Section 1(iv)(d) of the Copyright Act, *Supra*.

78 *Supra*.

79 Article 14 *bis*(2)(b) of the Berne Convention, *Supra*.

80 Article 14 *bis*(3) of the Berne Convention, *Supra*.

81 It can further be noted that there is no significance to the argument that the contents of the proposed Section 12B(4) of CAB, *Supra*, may be viewed as similar to the contents of Section 8(2) in the Copyright Act, *Supra*. Further reference should also be made herein to the concerns raised in the attached letters by the International Affiliation of Writers Guilds (IAWG) and the Federation for Screenwriters in Europe (FSE) (annexures x and xi), specifically as far as such relates to South Africa’s treaty obligations, *Supra*.

82 *Supra*; See open letters from the Guild and its members as attached herein (annexures i to vi).



comments<sup>83</sup> and petition<sup>84</sup> by our members, we trust that the Committee shall take heed and specific consideration of all of the President's reservations, especially those on the retrospective and arbitrary deprivations of property in Sections 6A, 7A and 8A,<sup>85</sup> the impermissible delegation of legislative power to the Minister in clauses 5, 7 and 9,<sup>86</sup> the  
 260 apparent arbitrary deprivation of property through certain exceptions which may affect the right to freedom of trade, occupation and profession, and the question of CAB's<sup>87</sup> compliance with international treaties<sup>88</sup> and the implications thereof.

#### E. CONCLUSION:

It is undoubtable that, despite admittedly having some positive results, there exists an overwhelming reality that CAB,<sup>89</sup> unfortunately, falls short in protecting the authors (creators) and owners of copyright works in South Africa. This is *inter alia* evident in the fact that CAB<sup>90</sup> intends to provide several extensive and far-reaching exceptions (including those specifically  
 270 dealt with above – pertaining to clauses 13, 19 and 20<sup>91</sup>). These exceptions will undoubtedly result in a significant decline in the ability and opportunities authors and copyright owners to *inter alia* earn royalties through their works, subsequently resulting in a significant loss of revenue or compensation acquired from the exploitation of such works. Furthermore, the uncertainty caused by the "Fair Use" doctrine, along with the increased need for court intervention in instances of unauthorised use, will inevitably lead to a costly, and ultimately inefficient copyright system (*\*our emphasis*).

The concerns raised in these submissions are, in the Guild's view, serious and are shared by the Guild's members and various other stakeholders affected by CAB,<sup>92</sup> including those in the  
 280 South African academic and legal fraternities<sup>93</sup>, as well as international stakeholders with legitimate interest<sup>94</sup>. Although we acknowledge and commend the Committee's (and Legislators') efforts and achievements to date, we respectfully request that CAB<sup>95</sup> be substantially reviewed, more so redrafted as a whole, in a bid to overcome the current flaws contained therein. Furthermore, we humbly request that the drafting process (whether partially or complete) should ideally be done with the assistance (and inclusion) of copyright experts with practical experience (*\*our emphasis*) – a sentiment shared by several stakeholders in the

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83 See additional comments provided by the members of the Guild as attached herein (annexure viii).

84 See a petition in support of these submissions signed by over 500 members of the guild and other interested parties as attached herein (annexure vii).

85 CAB, *Supra*.

86 CAB, *Supra*.

87 *Supra*.

88 *Supra*.

89 *Supra*.

90 *Supra*.

91 CAB, *Supra*.

92 *Supra*.

93 See S Karjiker *Should SA adopt Fair Use* TSAR 2021(2)(002); Dr O Dean *Copyright Blind Spot* spoor.com 4 June 2021.

94 These stakeholders specifically include the International Affiliation of Writers Guilds (IAWG) and the Federation of Screenwriters in Europe (FSE), whose letters of support of these submissions, along with further comments on CAB, are attached herein as annexures ix to xi. See also the Australian Law Reform Commission's *Copyright and the Digital Economy: Final Report* (2013) (ALRC Report) 88, Halpern *et al Fundamentals of United States Intellectual Property Law* (2012) 92, Beebe *Supra* 549 552, and Sookman and Glover, *Supra*.

95 *Supra*.

creative, academic, and legal fraternities.<sup>96</sup> Furthermore, we urge that more consideration be taken of the concerns and impact any new copyright legislation will have on the South African copyright creators, as they ultimately form the foundation of any industry using and built on creative works.

The Guild again thanks the Committee for the opportunity to have made these written submissions. We trust our submissions will be considered and we look forward to further engagements on this matter.

**F. REQUEST FOR ORAL SUBMISSIONS:**

We furthermore humbly request the opportunity to appear before the Committee and address the above in person, not only to elaborate on key aspects hereof but also to address any points which the Committee may require further engagement on. The intended representatives to appear, if leave of appearance is granted, would be Mr Steyn and his supporting council, as well as Ms Maphutha, Ms Weinek, and any other authorised member of the Guild's executives.

**G. HEREIN REPRESENTED BY:**

- **Legal Representative and Point of Contact:**

Christiaan Steyn (Director, STEYN IP)

[REDACTED]

- **Guild Liaisons:**

Cati Weinek (Chairperson, Writers Guild of [REDACTED])

[REDACTED]

Theoline Maphutha (Head of IP & Copyright, Writers Guild of South Africa)

[REDACTED]

Tshenolo Mabale (Head of Advocacy, Writers Guild of South Africa)

[REDACTED]

Thea Aboud (Executive Officer, Writers Guild of South Africa)

[REDACTED]

**H. ENDORSEMENT OF SUBMISSIONS:**

These submissions are supported and endorsed by the following entities:

- International Affiliation of Writers Guilds (IAWG)<sup>97</sup>
- Federation of Screenwriters in Europe (FSE)<sup>98</sup>

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96 *Supra.*

97 As confirmed in a letter from the International Affiliation of Writers Guilds (IAWG) (annexure ix).

98 As confirmed in a letter from the Federation for Screenwriters in Europe (FSE) (annexure xi).

I. **ANNEXURES TO THESE SUBMISSIONS:\***

- 340
- i. Open letter by **the Guild** (on behalf of its members) to the President and the Speaker of the National Assembly, dated 21 December 2020.
  - ii. Open letter by **Anil Polton** (Guild member) to the President and the Speaker of the National Assembly, dated 13 January 2021.
  - iii. Open letter by **Richard Nosworthy** (Guild member) to the President, the Speaker of the National Assembly and the Minister of Trade, Industry and Competition, dated 7 March 2021.
  - iv. Open letter by **Jacques Du Rand** (Guild member) to the President and the Speaker of the National Assembly, dated 12 March 2021.
  - v. Open letter by **Ayanda Halimana** (Guild member) to the President and the Speaker of the National Assembly, dated 25 March 2021.
  - vi. Open letter by **Theoline Maphutha** (Guild member) to the President and the Speaker of the National Assembly, dated 30 March 2021.
  - vii. Petition signed by over five hundred (500+) members and supporters of the Guild.
  - viii. Additional comments submitted by nineteen (19) members of the Guild.
  - ix. Letter of support of submissions from the **International Affiliation of Writers Guilds** (IAWG) to the Chairperson of the Portfolio Committee on Trade and Industry, dated 7 July 2021.
  - x. Open letter by the **International Affiliation of Writers Guilds** (IAWG) to the President and the Speaker of the National Assembly, dated 7 July 2021.
  - xi. Letter of support of submissions from the **Federation for Screenwriters in Europe** (FSE) to the Chairperson of the Portfolio Committee on Trade and Industry, dated 8 July 2021.
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*\* Annexures attached as separate bundle hereto.*