MUSIC PUBLISHERS' ASSOCIATION OF SOUTH AFRICA

27 January 2022

Chairperson, Portfolio Committee on Trade and Industry
Attention Ms. J. Hermans
Parliament of the Republic of South Africa
Cape Town

By email to: jhermans@parliament.gov.za

ahermans@parliament.gov.za

Dear Portfolio Committee Members,

SUBMISSION BY THE MUSIC PUBLISHERS' ASSOCIATION OF SOUTH AFRICA (MPA SA) FOLLOWING THE CALL FOR SUBMISSIONS RELATING TO AMENDMENTS TO SPECIFIC CLAUSES IN THE COPYRIGHT AMENDMENT BILL (B13B-2017)

The Music Publishers' Association of South Africa represents rights holders behind most of the songs one hears on radio and on digital services in South Africa, from domestic to international repertoire. Music Publishers represent composers, songwriters. They facilitate and help to fund the creation of local content, and they represent composers' business interests.

The royalty percentage that music publishers pay through to composers is often grossly understated by the media and in public forums. Composers are often lumped together with performers and recording artists. The global average royalty percentage that music publishers pay to composers is approximately seventy percent and music publishers often advance royalties to composers in the form of non-returnable, non-interest-bearing advances, at the risk of the music publisher.

Changes to the South African Copyright Act are very overdue, to improve and extend protection of both creators and rights holders. The bill has succeeded in introducing concepts such as communication rights, and South African songwriters and rights holders are holding out for such

protections to be enacted, so that they begin to enjoy the same benefits as their global counterparts.

The lifeblood of any music publisher is licensing musical work - songs. It could be said that music publishers 'license anything that moves'. The great benefit of this is that every time a song falls under a licence, a royalty is paid to the songwriters. It is not in the interest of the music publisher to make licenses so restrictive that too few can obtain them, but it is in the music publisher's interest to ensure that the works of songwriters are not undervalued.

Have the President's reservations been alleviated?

The important issues underlying the President's reservations remain misidentified, unaddressed, and hence uncured. We argue that the lawmakers including the National Assembly, in attempting to balance creator and 'user rights' and future-proof our laws for the fourth industrial revolution, have misidentified whom to protect and have unwittingly wheeled a Trojan Horse into the room. While this remains the case, the bill's enactment unfortunately remains a remote eventuality.
Whether composers will be better or worse off than their global counterparts under the proposed laws and in a digital environment is dependent on whether policy makers take a wide view, understand the so-called "value gap" and the well documented abuse of safe harbour laws by digital services.

The reason behind the bill's continued failure

The Trojan Horse that still hinders the bill's passage belongs to the digital platforms, also known as 'big tech' or the 'user lobby'. It is important to understand that this lobby is sponsored by the biggest companies in the world, with disproportionally rich advocacy resources deployed globally in an unprecedented manner, with a view to maintaining their special exemptions from liability – or safe harbour[1]. They have argued that copyright licensing is a hindrance to cultural expression, preventing audiences from accessing content. They further argue that 'recreators' who 'repurpose' works should be granted special liability exemptions from copyright, these recreators being the influencers and the everyday users on streaming platforms and social networks – the creators of User Upload and User Generated Content.

Therein lies the false premise.
Copyright Licensing is an enabling mechanism. Rights Holders promote the consumption of works for fair returns through licensing. All major content platforms are licensed by rights holders – including South African repertoire. There are more than 800 digital service platforms licensed worldwide, on which users engage widely. Soundcloud is a globally and fully licensed platform where users readily and successfully engage with and remix content under the current copyright regime. YouTube currently has 1.2 billion monthly active users and Spotify has 176 billion. It is through these licensed environments that the South African runaway hit song Jerusalema spread

[1] Owens, R. C. (2018, November 02). *Some governments are pushing back against Google's powerful political influence — but not ours*. Retr eved from F nanc a Post: https://f nanc a post.com/op n on/some-governments-are-push ng-back-aga nst-goog es-powerfu -po t ca - nf uence-but-not-ours

so virally to the corners of the globe. Legal Licensing did not hinder Jerusalema. It is through the funnel of copyright licensing that the composers of Jerusalema are remunerated.

There are clearly no barriers to licensing musical works. The issue actually lies with valuation.
The real issue is the disproportionately low royalties that flow through this funnel. The disparity between the value derived from musical works by content sharing platforms such as Tik Tok, YouTube, Facebook and the income received by rightsholders is enormous.[2]
This is severely exacerbated by these digital services' resistance against their obligation to identify copyright usage properly, to report fully to rights holders and to process metadata in a way that enables proper remuneration of rights holders and creators. Predicated on the fact that the big digital services typically do what they can to avoid copyright liability, usage reporting standards are significantly below normal business practice levels. This reported data is vital for rights holders and creators to understand consumption patterns and habits and to monitor cultural diversity. Unacceptably poor reporting has long term cultural implications.

Swimming in the wrong direction
There is only one winner if copyright licensing is seen as the problem. There is only one ultimate beneficiary if users and platforms are granted increased safe harbour protections. That is the digital services themselves – big tech. The more safe harbour protection, the less money flows through the licensing funnel, the more South African songwriters remain in a cycle of poverty and independent publishers suffer stunted growth from stifled capital inflows. This is an economic reality to which global markets are thankfully, eventually becoming alive. Australia has recently refused to extend safe harbours to User Upload Content services. Europe has clarified the copyright liability of such services. They now must take a licence or prevent the upload of unlicensed content exactly the same as any other Digital Service would. This is a clear restatement in law of our industry's exclusive rights in relation to such platforms**.**
Subsequent to that, the U.S. copyright office is officially considering similar safe harbour reforms under the DMCA, as is Canada.
South Africa is swimming in the opposite direction – the wrong direction.
Please refer to the submission by the International Confederation of Music Publishers (ICMP) under the current consultation for further details.

The DTIC's actual development objectives vs the Copyright Amendment Bill
Not only have global markets realized that the big tech lobby is a Trojan horse, but the DTIC has thankfully and correctly identified the real threat, in its deliberations around a Masterplan for the Creative Industries. It is critically important that public and private sector institutions get behind this Masterplan in development. In a DTIC report of the South African Creative Industry Masterplan Project there is an unequivocal warning: (emphasis is our own):

> "…Currently digital platforms are dominated by the digital tech platforms known as "FAANGs" (Facebook, Amazon, Apple, Netflix and Google). These are monopolies acting

[2] https://riaa.medium.com/five-stubborn-truths-about-youtube-and-value-gap-4faff133271f

> at an international level and can and do use their monopoly power to exploit South African creatives. This is a clear example of a market failure and indigenous digital platforms must be supported or established by government without or preferably with local businesses. **Further, the monopoly power of the FAANGs must also be addressed in any legislation that aims to protect South African creatives' intellectual property**."[3]

The MPA SA does not understand why the Portfolio Committee on Trade and Industry, instead of positioning behind the developing Masterplan, continues to turn to these same FAANG structures and lobby groups as their council, requesting ongoing advice and wording far beyond the scope of ordinary industry stakeholders.
Evidence demonstrating this 'shadow advisory' is annexed hereto (**Annexure A)**.

The DTIC and the portfolio committee and its advisors should be concerned that policy makers in Europe and other regions are contemplating Google's power to cherry-pick which cultural expressions should be amplified for advertising purposes. The effect of this practice is a steering away from cultural diversity and inevitable intensification of American culture at the expense of local cultural expressions. This must be considered against the backdrop of the following excerpt from the 2017 revision of the White Paper on Arts, Culture and Heritage:

"...the vast quantity of messages dished out to receivers by cultural industries daily can be analysed both in terms of their content and their impact on the dialectic of access and participation. Foreign cultural messages, specifically American, in the main, while promoting access by the local population to certain cultural goods and services, tend at the same time to frustrate local aspirations by alienating such people from active participation in the form of programmes or in the creation of cultural content''

Why the current corrections to the amendments fail

The Berne Convention three-step test

Inserting the three-step test in order to cure the President's concerns over the constitutionality of treatise non-compliance was the correct approach. However, this should simply have been a matter of applying the classic, globally tried and tested wording of the three-step test. Instead, the portfolio committee, through their legal advisor, turned again to the FAANG-sponsored 'user lobby' for assistance with drafting. The result is the introduction of novel, untested concepts such as interests that 'flow from' copyright, in 12C(2)(c): "...not unreasonably prejudice the legitimate interests of the copyright owner flowing from their copyright in that work."

This is a classic example how the user lobby has successfully captured the lawmakers' imaginations by painting an image of the everyday online user as a 'repurposer' of copyright, a

[3] Creating and Designing for Growth. South Africa's Creative Industry Masterplan to 2040: A Report of the South African Creative Industry Masterplan Project p52

'recreator'. These novel ideas about copyright say that these everyday users do not exploit the rights of copyright, but rather the rights 'flowing' from copyright, and they should enjoy exemption, or reduced liability. This consequently provides an argument for digital services when they have to negotiate royalty rates paid to songwriters. The purpose is to minimize royalty liability and dilute the value of contribution by authors.

Not only has the President's concern about treatise compliance not been properly addressed, but his extremely weighty concern that "*copyright owners will be entitled to a lesser share of the fruits of their property than was previously the case"* has been put on the shelf.

12A, 6A, 7A, 8A and the lack of consultation

The President expressed reservations around a lack of consultation around 12A of the copyright amendment bill. The amendments have not cured the President's concerns as 12A remains in breach of 25 (1) of the Constitution.

The much-discussed term 'such as' in 12A(a), which crosses into the Fair Use doctrine, was evidently the result of consultation with the FAANG-sponsored user lobby. They are the advocates of Fair Use for the very same reasons expressed above. It reduces their liability to rights holders, and reduces the amount of royalties flowing through the copyright licensing funnel.

The President referred to 6A, 7A, 8A as clauses which may affect trade, since they affect how copyright is traded. This is true, given the inflexible model of remuneration set out in these clauses. The one-size fits all approach to remuneration deprives composers of the right to adopt models which may be unique to their circumstances. This is a direct breach of freedom of trade as correctly noted by the president. Alarmingly, the clauses have still not been put up for public comment, excepting sub-sections 6A(4) and (5), 7A(4) and (5) and 8A(4) and (5). Section 39B which supplements 6A, 7A, 8A was also not put up for public comment. The processes adopted for these clauses are vulnerable to constitutional challenge.

It is therefore imperative in order for the bill to continue forward to successful enactment, that the Portfolio Committee open these provisions for proper consultation. As 12A was a legitimate reason for backwards referral, so 6A, 7A, 8A will be too.

The misidentified scope

The responsibility of the National Assembly is to ensure that the bill that is referred to the NCOP and the President, has been properly considered in terms of its constitutionality.

The South African Institute of Intellectual Property Law, SAIIPL, counts in their number pre-eminent intellectual property lawyers - practising lawyers. In their submission to the committee dated July 2021**,** they list 19 provisions with constitutional concerns, effecting more than 50% of the total text of the bill. This submission has therefore largely been read and ignored, and the scope of submissions restricted to a fragment of the true area of concern. This is obviously of grave concern, given the ramifications for the bill's continued passage.

Playing Roulette with composer's livelihoods

The inclusion of language in the current changes to the amendments and indeed in previous amendments (for example “substitution effect” in 12A(b)(iv)) that is novel and mostly without precedent, is particularly dangerous in that the risk of application is borne by vulnerable creative practitioners. The potential harm is particularly egregious when one considers that the concepts originate mostly in service of FAANG interests, in stark contrast to the requirements of a vibrant local industry. The DTIC and subsequently the Portfolio Committee on Trade and Industry, have not conducted local research on the value and dynamics of trade in musical works. This means that we can only guess the socio-economic impact of these unusual provisions. But we can and should judge them on the fact that they are designed to reduce the liability of digital services, the same services that are losing significant ground in most major markets as policy makers and regulators begin to dismantle the Trojan horse.

At a time when the industry is particularly vulnerable due to the pandemic, and where society collections in South Africa declined by nearly 5% last year[4], forcing such experiments on South African creators is a critical mistake. Last year, South Africa did not even feature in the top 50 countries in terms of royalties per capita[5]. In this context, South African policy makers are bound to consider the extent to which the most problematic amendments all share a common denominator – they spell out a devaluation or dilution of copyright and lower revenues for creators and rights holders. Examples are the expanded exceptions to copyright, personal copy exceptions without balancing provisions and the statutory 25-year limit to assignment.

Songwriters and rights holders are turning to policy makers the world over, to expand and extend their protections in the fourth industrial revolution. Most markets are taking up this charge, but there are some outlying exceptions such as South Africa.

Thank you for your consideration of our submission.

MPA SA

[4] CISAC Global Collections Report 2021 p37

[5] CISAC Global Collections Report 2021 p44

ANNEXURE A:

(Overleaf)

COPYRIGHT COALITION OF SOUTH AFRICA NPC

15 November 2021

Portfolio Committee on Trade Industry and Competition
c/o The Honourable Mr. Duma Nkosi, Chair
Parliament of the Republic of South Africa
CAPE TOWN

By email only to: nkosiduma@gmail.com; ahermans@parliament.gov.za; tmadima@parliament.gov.za; msheldon@parliament.gov.za; ymanakaza@parliament.gov.za *for distribution to the members of Portfolio Committee on Trade Industry and Competition in advance of deliberations on 16 November 2021*

Dear Honourable Nkosi

Open Letter to the Portfolio Committee for Trade Industry and Competition in reply to the responses by the Department of Trade Industry and Competition and the Parliamentary Legal Adviser to the public submissions on the Copyright Amendment Bill, No B13 of 2017

The Copyright Coalition of South Africa and many of its members participated in the remote meetings of your Committee on 9 and 12 November that heard the responses to the recent public consultation on the Bill from the Minister for Trade Industry and Competition, the Honourable Minister Patel, and by the Parliamentary Legal Adviser, Adv Van der Merwe. We were encouraged by the robust questioning and expressions of opinion from your Committee's members across all political party lines.

We nevertheless feel compelled to write to you and your Committee to express our deepest concern about multiple errors and oversights in the responses from the Minister and the Parliamentary Legal Adviser. In addition, the response from the Minister also explicitly drew from advice given by persons whom we consider to be partial stakeholders who continue to be engaged as "experts" to assist both your Committee and the Minister, thereby lending an unacceptable bias in these responses and in the further processing of the Bill. As a result, these responses run contrary to the goal originally set for the Bill, of advancing the interests of South African creators of copyright works.

This letter does not propose to raise the submissions made by our Association and its members again, but to place on record key flaws in the responses of the Minister and the Parliamentary Legal Adviser and in the amended form of the Bill that they propose be adopted by your Committee and by the National Assembly. These flaws illustrate the disconnect between the laudable goals of the Bill to improve the conditions of creatives, and deceptive presentations that obscure the reality that creatives will be more vulnerable than before.

1. **Both responses misread the detrimental impact of the Bill on creators and owners of copyright works**, amongst others (1) with their insistence to continue with the 'fair use' clause, most of the expanded exceptions and the contract override clause, and (2) that they do not deal with the omission of extending existing legal mechanisms to help copyright owners act against infringement of the new exclusive rights of distribution and communication to the public.

   Many submissions demonstrated the fact that, contrary to what the responses imply[1], the Bill's 'fair use' clause is not the same as the 'fair use' provision in the laws of the United States and the few other countries that have it in their law. (Despite the references to the 2014 ALRC report[2], Australia has not adopted fair use or introduced legislation to do so, seven years later.) The Bill's 'fair use factor' of "substitution effect" (in the place of "effect on the potential market") will seriously undermine the position of creatives to deal with their work in the internet economy.

   The Minister's response promotes the Bill's version of 'fair use' as being necessary to achieve certain developmental policy objectives, without any legal assessment offered of how these outcomes are not achievable under the existing fair dealing system.

   The Minister avoids the point of the public hearings on the Bill's 'fair use' clause when he argues that the 'fair use' clause and the exceptions are not unconstitutional and that they support the Development Agenda.[3] However, when these provisions apply in respect of uses of copyright works, there is no remuneration. Therefore the remuneration provisions that the Minister advances as benefitting creatives will not apply in respect of those uses. In this way, the Bill does not benefit creatives, but will aid persons who seek to benefit from the work of creatives without their permission and without remunerating them.

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[1] Minister's response pp.9-10, pp.18 (last sentence)-19 (first paragraph), Parliamentary Legal Adviser's response pp.10 (underlying comments)-11.

[2] Minister's response p.22, Parliamentary Legal Adviser's response p.11. [3] Minister's response pp.15-17 and 34.

2. **The fact that the DTI did not present a proper socio-economic impact assessment of the totality of the effect of the Bill on the creative sector or a professional legal analysis of the Bill's provisions measured against the Constitution and international treaties when the Bill was introduced** undermines numerous statements in the responses that assume that certain circumstances exist without evidence to support them. [3]

   The legal analysis was left to your Committee and the previous Committee and to the opinions of stakeholders, which we submit is an undesirable state of affairs and which resulted in the President's referral of the Bill back to the National Assembly. The only economic impact assessment that was introduced to the public participation process, an assessment by PricewaterhouseCoopers commissioned by the Publishers Association of South Africa for the hearings in August 2017 and that shows the prospect of severe economic damage to the publishing industry[4], is not mentioned.

3. **There is a continued over-reliance on a specific group of academics who are stakeholders who favour a general weakening of copyright and have no credentials in the practice of copyright law.** These academics have had access to the Committee in preference to creators in presentations made in December 2016, June 2017[6] and in August 2021[5], as well as in the formulation of the Minister's response[6]. Professionals in the copyright industries and attorneys who practise copyright law consider their work to be unpersuasive and bad in law.[7]

   Specifically, Dr Tobias Schonwetter, listed as an expert who assisted the Minister with his response, (1) presented copyright exceptions as "users rights", a concept that is alien to South African law, in his training of the previous Committee in June 2017,[8] (2) then was part of changing that narrative to "creators rights" in 2018 in order to convince South African legislators of the merits of the Bill, as revealed by his colleague, Prof Ncube,[9] (3) gave an opinion to the previous Committee in October 2018, after input received from the previous Committee's 'Panel of Experts', to the effect that there was nothing wrong with the Bill and that it was fully

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[3] For example: Minister's response p.23 and Parliamentary Legal Adviser's response p.10 (underlying comments)-11 in respect of the supposed benefits of 'fair use'; Minister's response p.34 on the unsubstantiated statement by Prof Fiil Flynn that "Economic analysis shows that a monopoly in a market with very high income inequality will rationally profit maximize by pricing to the rich sliver of the population and excluding the large majority of Consumers …" and the insinuation that this claim applies to products protected by copyright. Prof Fiil-Flynn's economic arguments supporting copyright exceptions have previously been dismissed as "not relevant for policymaking": https://www.phoenix-center.org/perspectives/Perspective17-12Final.pdf.

[4] https://publishsa.co.za/wp-content/uploads/2021/07/Pwc-Report-On-Copyright-Amendment-Bill-31-July-2017-1.pdf

[6] https://legalbrief.co.za/media/filestore/2018/10/andre_myburgh.pdf pp.241-242.

[5] Oral submission for the SA Institute of Intellectual Property Lawyers on 11 August 2021.

[6] Minister's response p.6.

[7] Oral submission for the SA Institute of Intellectual Property Lawyers on 11 August 2021; https://www.polity.org.za/article/rights-forcreators-or-dismantling-copyright-2019-03-27.

[8] https://legalbrief.co.za/media/filestore/2018/10/andre_myburgh.pdf p.242

[9] Oral submission for the SA Institute of Intellectual Property Lawyers on 11 August 2021.

compliant with the international treaties to which South Africa is a party,[10] (4) conceded as coauthor of the so-called "Joint Academic Opinion" with Prof Forere of July 2021 that some minor changes to the Bill would be warranted,[11] and (5) supported the Minister's response that proposed numerous changes to the Bill.[12] Dr Schonwetter's impartiality has already been publicly questioned by many in the copyright industries, but the errors and contradictions in his past advice are now so obvious that they must surely disqualify him and the UCT IP Policy Institute from further participation as experts.

On the other hand, the advice of persons active in copyright practice requested by the previous Committee as part of its 'Panel of Experts' was largely ignored and even misrepresented to Parliament, as appears in the Minister's response that "The view of the legal and technical experts of the Committee at the time the Bill was drafted, is that the Bills are aligned with the contents of the relevant Treaties."[13]

4. Our Association and its members are extremely concerned about the apparent pervasive influence of big technology companies, specifically Google, throughout this process. Certain amendments to the Copyright Act will only benefit big technology companies at the expense of South African creators of copyright works.

US internet giant Google has supported the Bill since its introduction, and its submission in the latest public hearings continue to support the version as passed by Parliament in 2019, seeing nothing wrong with it.[14] This is in contrast with the responses from the Minister and the Parliamentary Legal Adviser.

We are aware that (1) the Bill was publicly introduced by the DTI in July 2017 at an event in Pretoria co-hosted by Google,[17] (2) it was recorded in Parliament that Prof Fiil-Flynn, a US academic who co-authored the "Joint Academic Opinion" with Dr Schonwetter and Prof Forere and whose work is quoted in the Minister's response[18], was funded by Google at least at the

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[10] Letter from the University of Cape Town Intellectual Property Unit dated 19 October 2018 entitled "Opinion", pp.8-11. This document was tabled at the meeting of 31 October 2018 of the previous Committee but never made public by its chair: https://pmg.org.za/committee-meeting/27409/.

[11] https://www.parliament.gov.za/storage/app/media/Links/2021/August/26-08-2021/Forere_Academic_opinion.pdf at pp. 2 and 1618.

[12] Numerous changes to the Bill proposed in the Minister's response pp.27-30, 36-38 and 40-43.

[13] Minister's response p.33. Also referenced in the Parliamentary Legal Adviser's response p.9. See https://legalbrief.co.za/media/filestore/2019/03/Letter_AF_Myburgh_to_Minister_R_Davies_Mr_E_Makue_14Mar2019.pdf.

[14] https://www.parliament.gov.za/storage/app/media/Links/2021/August/26-08-2021/Google_Submission.pdf. However, the Parliamentary Legal Adviser's response quotes directly from it on p.10 to justify the continued support for the Bill's 'fair use' clause, with a quotation from the Max Planck Institute that most copyright lawyers, we believe, would find contentious. [17] https://legalbrief.co.za/media/filestore/2018/10/andre_myburgh.pdf p.242-243. [18] Minister's response p.34.

time of his visit(s) to South Africa in July and August 2017,[15] (3) it was revealed in Parliament that Google had funded Media Monitoring Africa to make submissions in support of the Bill to Parliament in August 2017,[16] and that the Freedom of Expression Institute operated a similar programme, the source of funding of which is unknown, developed with, or at least with the prior knowledge of, Dr Schonwetter, Prof Ncube, Prof Fiil-Flynn, Ms Denise Nicholson and Mr Ben Cashdan (then with the Freedom of Expression Institute and now spokesperson for the pro-Bill lobby group RecreateZA),[17] (4) an official of the DTI had attended an event co-hosted by Google in Mauritius called the "Africa Internet Academy" in October 2018,[18] and (5) Google publicly funded the staffing of a researcher for RecreateZA during 2019. [19]

We suspect that this is but the tip of the iceberg. The source of the subsistence and travel costs of Prof Fiil-Flynn's many subsequent trips to South Africa, including in a delegation of four legal academics and a lawyer from the United States to attend programmes to support the Bill in December 2019, remains unknown.[20] If the costs of these American academics were not paid by parties in South Africa, one can only deduce that there must be a lot of interest from wellfunded organisations in the United States to have the Bill passed as it is.

5. The Minister has construed the mandate of the Portfolio Committee narrowly to only those points raised by the President in his referral of the Bill back to the National Assembly[21], despite the direction of the Constitutional Court in *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill*[22] that all questions of constitutionality must be considered in such a case.

Notwithstanding the Minister's approach, the Minister and the experts that support him, as well as the Parliamentary Legal Adviser, apparently agree that some of the submissions have shown up numerous errors in the Bill that fall outside the President's reasons, that they have proposed be corrected.[23] Indeed, it is clear to us that many of these corrections have their origin in errors pointed out by the SA Institute of Intellectual Property Lawyers in the public hearings [24] (that

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[15] Public hearings of the previous Committee on 4 August 2017: https://pmg.org.za/committee-meeting/24766/.
[16] Public hearings of the previous Committee on 3 August 2017: https://pmg.org.za/committee-meeting/24762/.
[17] https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Ascds%3AUS%3A95bad11e-0c8d-4231-973d09259a88367e#pageNum=1
[18] Minister's reply to Parliamentary Question 1307; https://pmg.org.za/committeequestion/12716/?utm_campaign=searchalert&utm_source=transactional&utm_medium=email.
[19] https://www.google.com/policyfellowship/emea-fellowship/.
[20] Prof Fiil-Flynn's involvement resulted in Recreate putting up an item on its website's Q&A page "Are you guys associated with Professor Sean Flynn? If yes, what is his involvement in the organisation?" (deleted on 15 May 2019).
[21] Minister's response pp.4 and 8.
[22] (CCT12/1999), [1999] ZACC 15; 2000 (1) SA 732; 2000 (1) BCLR 1 (11 November 1999)
[23] Numerous changes to the Bill proposed in the Minister's response pp.27-30, 36-38 and 40-43, and the same and other changes proposed in the Parliamentary Legal Adviser's response pp.13-23.
[24] https://www.parliament.gov.za/storage/app/media/Links/2021/August/26-08-2021/SAIIPL_Submission.pdf

identified a total of 19 points covering about 50% of the text to be introduced by the Bill into the Act) and by members of the Panel of Experts in October 2018.

In conclusion, we submit that the legal risks of proceeding with this deeply flawed Bill have not been properly appreciated by the Minister and the Parliamentary Legal Adviser. The Copyright Coalition of South Africa and many other like-minded stakeholders remain committed to supporting Parliament to pass the urgently-needed reform of South Africa's copyright and performers protection laws. However, we need to impress on you that the current Copyright Amendment Bill, 2017, and Performers Protection Amendment Bill, 2016, are not the right way to go about this effort. This legislation, if passed by the National Assembly again, will certainly result in many more years of delay due to their inherent flaws that both the Minister and the Parliamentary Legal Adviser now admit do exist.

In the public interest, we have written this letter as an open letter. Yours

faithfully

Chola Makgamathe
COPYRIGHT COALITION OF SOUTH AFRICA

The Copyright Coalition of South Africa has as its members Academic and Non-Fiction Authors of South Africa (ANFASA), Animation SA, Audio Militia, the Academy of Sound Engineering, Composers Authors and Publishers Association (CAPASSO) Dramatic Artistic Literary Rights Organisation (DALRO), The Independent Black Filmmakers Collective (IBFC), Independent Producers Organisation (IPO), The Music Publishers Association of South Africa (MPASA), The Publishers Association of South Africa (PASA), PEN Afrikaans, Printing SA (PIFSA), Recording Industry of South Africa (RiSA), RiSA Audio Visual (RAV), Southern African Music Rights Organisation (SAMRO), Trade Union for Musicians of South Africa (TUMSA), the Visual Arts Network of South Africa (VANSA), and Writers Guild SA.