



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

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## PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

The Portfolio Committee on Trade and Industry hereby publishes the following clauses of the Copyright *Amendment Bill [B13-2017]* for further public comment:

### (1) Definition of collecting society – Clause 1

The Committee intends to amend the existing definition of “collecting society” by substituting it with the following definition:

“(b) ‘**collecting society**’ means a non-profit company contemplated in the Companies Act, 2008 (Act No. 71 of 2008)—

- (a) that is owned by holders of rights in terms of this Act or the Performers’ Protection Act, 1967 (Act No. 11 of 1967);
- (b) whose only members are holders of rights in terms of this Act or the Performers’ Protection Act, 1967 (Act No. 11 of 1967);
- (c) to whom members have granted mandates to license, manage or otherwise represent, copyright or neighbouring rights on behalf of and for the benefit of those members or exercise any of the actions contemplated in section 22C(2); and
- (d) whose primary purpose is executing the mandates contemplated in paragraph (c).”

### (2) Adding the rights of distribution and rental

The Committee intends to amend the Bill so that the Copyright Act will provide for rights of distribution and authorizing rental as follows:

Clause 4 (section 6 – literary and musical works), by inserting the following into subsection (1):

“(eC) distributing the original or a copy of the work to the public;”

Clause 6 (section 7 – artistic works), by inserting the following into section 7:

“(dC) distributing the original or a copy of the work to the public;”

Clause 8 (section 8 – audiovisual works), by inserting the following into subsection (1):

“(dC) distributing the original or a copy of the work to the public;

(dD) authorising commercial rental of the original or copy of the work to the public;”

Clause 10 (section 9 – sound recordings), by inserting the following into section 10:

“(f) distributing the original or a copy of the work to the public;

(g) authorising commercial rental of the original or copy of the work to the public;”

**(3) Requiring recording of acts in respect of audiovisual works and providing for an offence in this regard – Clause 9, Section 8A**

The Committee intends to amend section 8A further to provide for an obligation to record and report certain acts, and to provide for an offence should a person fail to do so:

“(6) Any person who executes an act contemplated in section 8 for commercial purposes must—

- (a) register that act in the prescribed manner and form; and
  - (b) submit a complete, true and accurate report to the performer, copyright owner, the indigenous community or collecting society, as the case may be, in the prescribed manner, for the purpose of calculating the royalties due and payable by that person.
- (7) (a) Any person who intentionally fails to register an act as contemplated in subsection (6)(a), or who intentionally fails to submit a report as contemplated in subsection (6)(b), shall be guilty of an offence.
- (b) A person convicted of an offence under paragraph (a) shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, or if the convicted person is not a natural person, to a fine of a minimum of ten per cent of its annual turnover.
- (c) For the purpose of paragraph (b), the annual turnover of a convicted person that is not a natural person at the time the fine is assessed is the total income of that person during the financial year during which the offence or the majority of offences were committed, and if that financial year has not yet been completed, the financial year immediately preceding the offence or the majority of offences, under all transactions to which this Act applies.”

**(4) Empowering Collecting Societies further – Clause 25, Section 22C**

The Committee intends to empower collecting societies further by allowing the right to request information and to clarify what collecting societies may negotiate on behalf of members by inserting the following paragraphs into subsection (2):

“(2) Subject to such conditions as may be prescribed, a collecting society may—

...

- (b) require any person who executes an act contemplated in sections 6, 7, 7B, 8 or 9 for commercial purposes to provide a complete, true and accurate report to the collecting society in the prescribed manner, for the purpose of calculating the royalties due and payable by that person;

...

- (e) negotiate licensing fees, royalty rates and tariffs; and"

#### **(5) Creating an offence for not providing information to a Collecting Society – Clause 25, Section 22C**

The Committee intends to empower collecting societies further by providing that failure to provide correct information would constitute an offence as follows:

- "(4)(a) Any person who intentionally fails to submit a report to a collecting society as contemplated in subsection (2)(b), shall be guilty of an offence.
- (b) A person convicted of an offence under paragraph (a) shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, or if the convicted person is not a natural person, to a fine of a minimum of ten per cent of its annual turnover."

#### **(6) Providing for the skills of an administrator to be appointed for a Collecting Society – Clause 25, section 22F**

The Committee intends to clarify that when the Commission has to take over the administration of a collecting society, the Commission must approach the Tribunal for the appointment of an administrator to assist the Commission, and to provide for the skills of such an administrator:

"(5) The Commission shall be responsible for the administration and discharge of the functions of the collecting society contemplated in subsection (3) during the period of suspension or cancellation of the accreditation of that collecting society following the order of the Tribunal: Provided that the ~~Tribunal may, on application by the Commission,~~ Commission shall apply to the Tribunal for the appointment of ~~any suitable~~ a person to assist the Commission in the administration and discharging of the functions of that collecting society, which person shall be skilled in one or more of the following:

- (a) Collective management and general administration of rights under this Act;

- (b) business rescue, administration or liquidation; or
- (c) other skills deemed appropriate by the Commission and Tribunal.”

#### **(7) Clarifying section 28 – Clause 28**

The Committee intends to amend subsections (2) and (5) of section 28 to avoid unintended consequences, so that subsections 92) and (5) will now read as follows:

“(2) This section shall apply to any copy of the work in question made outside the Republic **[which if it had been made in the Republic would be an infringing copy of the work]**, if the making of such copy was without the authorization of the copyright owner.”;-

“(5) This section shall **[mutatis mutandis]** with the necessary changes, apply with reference to an exclusive licensee who has the right to import into the Republic any work published elsewhere, if the making of such copy was without the authorization of the copyright owner.”

Members of the public are invited to submit written comments on these clauses by Thursday, 25 October 2018. Comments received after the closing date will not be considered. Should you require a copy of the draft amended Bill, please contact **Art.4(1)(b)** (details below).

All correspondence should be addressed to Ms J Fubbs, Chairperson: PC on Trade and Industry and marked for the attention of **Art.4(1)(b)**, Box 15, Parliament, Cape Town 8000.

Kindly direct all enquiries and written submissions to **Art.4(1)(b)**, **Art.4(1)(b)**.

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