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Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

**THE PERFORMERS' PROTECTION
AMENDMENT BILL, 2016**

**PRESENTATION TO THE PORTFOLIO
COMMITTEE ON TRADE AND INDUSTRY
11 NOVEMBER 2016**



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Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Presenter

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Background

Background:

- Intellectual Property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.
- Exclusive Right.
- IP is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source.
- Copyright, includes literary and artistic works.
- Novels, poems and plays, films, musical works.
- Drawings, paintings, photographs and sculptures, and architectural designs.
- Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programmes.
- The innovations and creative expressions of indigenous and local communities are also IP, yet because they are “traditional” they may not be fully protected by existing IP systems.
- In 2013 a Draft IP Policy was published.
- Copyright and related rights were consulted upon.

Background

Background:

- Copyright Review Commission (CRC) established and made recommendations of effective collective management system.
- 122 written submission received.
- Through the public participation process the **dti** began to unpack the issues facing the audio visual performers in South Africa.
- Repeat Fees, Commercial Exploitation, Contracts and the Beijing Treaty on Audio Visual Performances.
- Cabinet approved the Bill for introduction into Parliament on the 8th of June 2016.
- The WIPO Beijing Treaty on Audiovisual Performances (BTAP) is **a multilateral treaty acknowledging for the first time the intellectual property rights of performers with regard to their audiovisual performances**. Adopted in 2012, it is a landmark achievement and one that officially ends a discrimination dating from the early 60's and resulting, until recently, in the sole protection of audio performances in most countries around the world.

Intellectual Property Rights

Performance Protection – PPA

- Three categories of related rights namely: performers(actors, musicians and dancers), producers of phonograms and broadcasting organisations.
- Live performances are a principal means of generating income for musicians and these performances are regulated through the PPA
- A singer, musician, dancer is one who claims or performs literary or artistic works.
- This Act does not in anyway restrict or affect the rights provided for by any other law relating to Copyright in literary and artistic works.
- The protection of performance is provided for in S5 of the PPA and it extends to other countries that are members of the World Trade Organisation (WTO)
- Performance must be taking place.
- Broadcast without fixation.
- Royalties are paid for performances depending on contractual terms agreed upon, these royalties are paid to the owner of any copyright subsisting in the fixation in terms of S 9A of the Copyright Act.

Problem Statement

- **the dti** as a custodian of Intellectual Property (IP) has identified that IP Legislation is not updated to be in line with flexibilities found in multilateral arrangements, in the area of copyright the Act limits the access to education, access to knowledge, learning materials for the nationals and people with disabilities. The creative industry in particular musicians, are vulnerable to abuses by users of their IP.
- Local artists, performers, composers and other authors of copyright works are dying as paupers because royalties of their works are not paid.
- The universal purpose of copyright is to reward and incentivise creators of knowledge and art. Various sectors within the South African copyright regime are dissatisfied. Ranking highest are the local performers and composers, who have not benefitted due to the lack of access to the Copyright system. (Copyright Review Commission (CRC) report 2011).
- The digital environment is not catered for in the Acts.

Problem Statement

- Dispute resolution processes are not speedy as courts are over loaded with work. The Copyright Tribunal is presided over by Judges of the High Court and disputes are not resolved speedily.
- There is no obligation on the side of Government to impart knowledge to the public on copyright issues. Education and awareness for stakeholders are not taking place effectively. Education and awareness programs are to be addressed in order to develop and support the growth of the creative industry and to encourage South Africans to be creators of intellectual property.

Objectives of the Bills

- 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. (CRC Report, NDP and Draft IP Policy)
- To address the licensing of copyright works/material in relation to commissioned work to facilitate commercial exploitation by any person so licensed.
- To ensure that IP legislation remains updated in view of the ever evolving digital space; that current legislation does not limit access to education; that access to information and resources are available for persons with disabilities and that artists and authors of works do not die as paupers due to ineffective protection.

Objectives of the Bills

- To provide exceptions and limitations in order for South Africa to address national needs, to encourage international organisations to take into consideration “new emerging issues” in the area of copyright which enhances access to and use of copyright works.
- To enhance access to information for the enhancement of education and research and payment of royalties to alleviate the plight of the creative industry.
- The Appendix to the Berne Convention (incorporated into the TRIPS Agreement) allows developing countries to make use of compulsory licensing (use of protected works without authorisation but paying remuneration) in respect of the rights of translation and reproduction for educational purposes.

Socio Economic Impact Assessment

- Socio Economic Impact Assessment (SEIAS) was completed in respect of the Bill.
- SEIAS report took into account the impact of the proposed legislative amendments on the national priorities (economic growth, social cohesion etc.) and the potential welfare and economic opportunities which could arise for the group involved.
- The proposed legislative amendments will achieve the intended outcomes and offer authors and creators of copyright works the benefits due to them if education and awareness and the regulatory capacity of the CIPC are intensified

Proposed Amendments Performers Rights

Issues to be introduced into the Performers Protection Amendment Bill	What the Bill provides
Beijing Treaty on Audio Visual Performances	<p>Grants performers four kinds of economic rights for their performances fixed in audio visual fixations: (1) reproduction [direct or indirect reproduction in any manner or form]; (2) distribution [making available to the public the original and copies through sale or transfer of ownership]; (3) rental [commercial rental to public of original and copies]; (4) making available [the right to authorise the making available to the public by wire or wireless means etc.].</p> <p>Giving performers in audio visual performances moral rights.</p>

**Proposed Amendments Performers
Rights**

**Issues to be introduced into the
Performers Protection Amendment
Bill**

Beijing Treaty on Audio Visual Performances

What the Bill provides

The main difference between the BTAP and the 1961 Rome Convention is that, whilst the latter only awarded performers the right to oppose certain uses of their performances, the former grants them a comprehensive list of exclusive rights, including the right of making available on demand, which has become essential in light of the latest technological developments and the digital distribution of creative works. The BTAP also awards audio visual performers moral rights, which were not included in the Rome Convention. By far the most striking difference however is the fact that, the BTAP specifically protects audio visual fixations, whilst the Rome Convention did not.



Proposed Amendments Performers
Rights

Issues to be introduced into the Performers Protection Amendment Bill	What the Bill provides
WIPO Performances and Phonograms Treaty (WPPT)	Both the performer and producer of a phonogram shall enjoy the right to a single equitable remuneration in terms of the Bill. Provides economic and moral rights for performers of phonograms/sound recordings.

CONCLUSION

- Performers are often in a very weak bargaining position and forced to transfer all their economic rights to producers in perpetuity for little more than a symbolic payment.
- The collecting agency should be a collecting society (as raised by business).
- Assignment should be more than 25 years (as raised by business).
- One right, one society.
- Industry should unite.
- Intellectual Property Rights in terms of the TRIPS Agreement-Articles 6,7,8 should be applied in a balanced manner for the benefit of both producers, users and consumers.
- It will be wrong to allow one stakeholder to usurp all the benefits at the expense of other stakeholders.
- The Bill aims to balance the equation in the area of copyright and related rights.



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Thank You