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Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

**Consumer and Corporate Regulation**

**Presentation to the Portfolio Committee on  
Trade and Industry  
Copyright Amendment Bill - Proposed Clauses**

**14 August 2018**

## Clause 1

### Visual artistic work' —

(a) means an original artistic work that was created for the purpose of being appreciated by the visual sense and includes a painting, a sculpture, a drawing, engraving and a photograph; and

(b) excludes artistic work such as industrial design, works of architecture, engineering drawings, digital or graphic design, fashion design, interior design, circuit layouts, commercial logos and icons for applications;”

**Policy:** Unlike novelists and musicians, visual artists such as painters and sculptors do not directly benefit from downstream payments when their works change hands in global markets and do not generate significant income from the reproduction and communication rights provided to other creators under copyright law. The artist’s resale right seeks to correct this imbalance by ensuring that artists receive a small percentage of the sale price of a work when it is resold. To refine definition excluded the word commercialised. Audiovisual work has never been intended to fall part of the ARR and is not part of how the principle of RRR.

## Clause 5

### Section 6A

Royalties regarding literary or musical works

6A. (1) In the absence of an agreement to the contrary, no person may reproduce, publish the work, communicate or make the work available to the public by wire or wireless means as contemplated in section 6 (a)(b)(c)(d) (eA) and (eB) without payment of royalty to the author of the relevant copyright.

(2) The amount of any royalty contemplated in subsection 1 shall be determined by a written agreement between the author of the copyright and the publisher or between their representative collecting societies.

(3) Where the author of the copyright and the publisher can not agree on the royalty amount, the author of the copyright or the publisher may refer the matter to the Copyright Tribunal for an order determining the amount payable.

(4) The agreement contemplated in subsection 2 shall include the following minimum requirements:

- (a) the rights and obligations of the author and the publisher,
- (b) the agreed amount of royalty payable, and
- (c) a dispute resolution mechanism.

**Policy: This Clause to read like 9A in the Bill. Minimum contractual requirements are broad guidelines to contracts. The cooling off period is removed as it does not apply to literary works.**

## Royalties regarding audiovisual works

## Section 8A

8A. (1) In the absence of an agreement to the contrary, no person may, without payment of a royalty to the copyright owner:

- (i) broadcast a audio visual work as contemplated in section 8(c),
- (ii) cause the work to be transmitted as contemplated in section 8(d),
- (iii) make the audio visual work available to the public by wire or wireless as contemplated in section 8(f), and
- (iv) Communicate the performance to the public.

(2) The amount of royalty contemplated in subsection 1 shall be determined by a written agreement between the copyright owner, the user of the audiovisual works and the performer or between their representative collecting societies.

(3) The copyright owner who receives payment of a royalty in terms of this section shall share such royalty with any performer whose performance is featured in the audio visual work in question and who would have been entitled to receive a royalty in that regard as contemplated in section 5 of the Performers' Protection Act, 1967 (Act No.11 of 1967).

(4) The performer's share of the royalty shall be determined by an agreement between the performer and the copyright owner or between their representative collecting societies.

(5) Where the copyright owner and the user of the audiovisual work or where the copyright owner and the performer fail to determine a royalty amount to be paid as contemplated in this section, the copyright owner, or the user or the performer or their representative collecting societies may refer the matter to the Copyright Tribunal for an order determining such royalty amount.

(6) The agreement contemplated in subsection 2 and in subsection 4 must include the following minimum requirements:

- (a) the rights and obligations of the author and the publisher;
- (b) the agreed royalty amount to be paid;
- (c) a cooling off period which shall not be less than 7 days; and
- (d) a dispute resolution mechanism.

**Policy: This Clause to read like 9A in the Bill. Minimum contractual requirements are broad guidelines to contracts.**

## Clause 9A

### Section 9A Royalties regarding Sound Recording.

9A.(1) (a) In the absent of an agreement to the contrary or unless otherwise authorised by law, no person may, without payment of a royalty to the owner of the relevant copyright –

(iv) make the sound recording available to the public as contemplated in section 9(f).

(aA) Any person who performs an act contemplated in section 9(c), (d), (e) or (f) must -

**Policy: International legal instruments apply. The economic rights of performers in WPPT to align national to the international treaties. Secondly for joining purposes, so that the performer can benefit from it. If provided for only in the Performer's Protection Amendment Bill, they will not benefit from it. It has to be in the Copyright Bill.**

## Programme carrying signals

11. (1) Copyright in programme carrying signals vest the exclusive right to undertake, or to authorize, the—
- (a) direct or indirect distribution of such signals by any distributor to the general public or any section thereof in the Republic, or from the Republic;
  - (b) communication of **the work** to the public by wire or wireless means;
  - (c) making the work available to the public by wire or wireless means, so that any member of the public may access the work from a place and at a time chosen by that person.”.

**Policy: This applies to signals not the content. The clause must also be technologically neutral. SA position at WIPO. This is the problematic part as per public comments as this brings the work into equation. As this is still under discussion as WIPO and to address the concerns of the public we could retain the wording in the principle Act to avoid the unintended consequence of giving ownership of work through the signal.**

## Reciprocity:payouts

**(c) only make payment of royalties to a collecting society outside the Republic, if there is a reciprocal agreement regarding royalties in place between that country and the Republic. (As in the Bill).**

**Policy: Reciprocity must exist and collecting societies can have reciprocal arrangements. The National laws of both countries should permit that. Reciprocity emanates from international legal instruments once a country has joined such treaty. At National sphere the national law will pronounce on reciprocity so that collecting societies at implementation level can make reciprocal arrangements. This is an implementation matter to create reciprocity.**

## Freedom of panorama

15. Section 15 of the principle Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) The copyright in an artistic work shall not be infringed by its [inclusion] use in [a cinematograph film or a television broadcast or transmission in a diffusion service] another work, if—

(i) such [inclusion] use is merely by way of background, or incidental, to the principal matters represented in [the film, broadcast or transmission] that other work; or

(ii) the artistic work so used, is situated in a public place.

(b) The copyright in an artistic work shall not be infringed by the issue to the public of copies, or the communication to the public of anything, whose making was by virtue of this subsection not an infringement of the copyright.”.

**Policy question: The current Act is restrictive as it fails to authorize the incidental capture of works.**



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**Conclusion**

**Thank You**