



**the dti**

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

**Portfolio Committee on Trade and Industry**

**Copyright Amendment Bill - Advertised Clause**

**9 October 2018**

## Background

- The clause of criminalisation of collecting societies was advertised.
- Two submissions were received.

## Advertised Clause: Clause 22B(8)

### Comment

- Criminal sanction may serve as a deterrent to individuals who have for many years acted to the detriment of composers by representing themselves as collecting societies or agents thereof.
- Yardsticks be put in place in the regulations to establish the instances where it can be deemed that an individual or entity is representing themselves as a collecting society.
- The accreditation of collecting societies is not too onerous for collecting societies who may wish to enter into the market subsequent to the promulgation of the Bill

### the dti Response

- Agreed.
- Individuals can organise themselves. Freedom of association is important.
- The accreditation system already exists and it is not onerous It will be enhanced.

## Advertised Clause: Clause 22B(8)

### Comment

- Regulation should thus not usurp or decrease the rights that members have save for in stances where competition considerations demand. The criminalisation of unaccredited licensing does not aid in increasing transparency to members and consequently should not necessarily be part of the eventual legislation.
- The unintended consequence of criminalisation would be a member exercising their exclusive right being arrested for breaking the law. The likelihood of this occurring increases given the fact that there is no clear definition of what a CMO is in the legislation.
- Two or more rightsholders can and should be able to exercise their exclusive right directly without fear of being arrested.

### the dti response

- The regulation will ensure transparency. The Bill addresses governance issues.
- Collecting societies are non profit organisations. Individuals have freedom of association with no criminal implications.
- CMO may be defined for clarity.
- Individuals have freedom of association.

## Advertised Clause: Clause 22B(8)

### Comments

- Whether or not a CMO acting in its capacity as a beneficial rightsholder, assignee or exclusive licensee should be required to obtain accreditation.
- If other rightsholders, assignees and/ or exclusive licensees can exercise such rights sans accreditation, there is a legal question as to why such is required for CMOs particularly to the point of criminalisation.
- Members of CMOs can now license works directly without the need for CMOs. This pushes CMOs to be more efficient in order to retain the members rights. Criminalisation of members ability to license outside the CMOs without the need to obtain accreditation will negatively affect this favourable condition that digitisation has granted members.

### the dti response

- If it is an organisation that meets a particular criteria it should be accredited.
- Individuals have freedom to associate and organize themselves.

## Advertised Clause: Clause 22B(8)

### Comments

- The provision on the definition of “Collecting Society” as in the principal Act is flawed.
- The Bill must clearly define the entity it seeks to regulate to avoid negative impacts on business that fall outside the scope of the proposed.
- The digital environment has afforded European, American etc CMOs the ability to license usage within South Africa directly from their home territories. These CMOs will not be subjected to any possible criminal sanction for not having been accredited within the territory, however they will be able to operate unfettered due to the nature of digital licensing.
- The current wording is thus unfit to deal with the current status quo in as far as digital licensing is concerned.
- The threat of criminal sanction will unfairly tilt the scales in favour of international CMOs who will prove more efficient due to the fact that they are not subject to regulation.
- Multi-national companies that offer music, film or books in South Africa can all be licensed by international rightsholders for usage that occurs in South Africa, without either setting foot in the country.

### the dti response

- CS is defined in IPLAA.
- Regulations provide accreditation and criteria for CS. This to be strengthened.
- The foreign CMO issue to be reviewed further. It may be an implementation issue.

## Advertised Clause: Clause 22B(8)

### Comments

- It becomes crucial to afford local CMOs the ability to compete on an equal footing without additional administrative burdens or threats of criminal sanction.
- Failing to do so will result in local creators being forced to join the international CMOs to collect royalties from usage of their works in South Africa.

### the dti response

- Regulations for Collecting Society is crucial. The criminal sanctions are not linked to competitiveness or monopolies but protecting the vulnerable.
- Collecting Societies must be accredited. There is a need for CS in South Africa.

## Way forward

- Clarity required on foreign CS and WTO implications.
- The PC to guide on the one collecting society per set of rights as it has implications for the accreditation issues.
- The World Intellectual Property Organisation (WIPO) supports the principle of one collecting society per set of rights as it is a world wide practice and it makes the system of collective management workable.
- Regulations will address the accreditation.



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**Conclusion**

**Thank You**