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Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Performers Protection Amendment Bill: linkages between Copyright Amendment Bill and Performers' Protection Bill

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the dti Delegation

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Purpose

The purpose of the presentation is to brief the Portfolio Committee on Trade and Industry on the Performer's Protection Amendment Bill and highlight linkages with the Copyright Amendment Bill.

Content of the Presentation

- **Challenges**
- **Domestic Legal Framework – South Africa Approach**
- **Copyrightdefined**
- **Neighbouring / Related rights**
- **International Legal Framework**
- **Cross - Referencing Provisions**
- **Collective Management of Rights**
- **Directors in the Theatrical Productions – new development**
- **Conclusion**

Challenges

- 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.
- Lack of formalisation of the creative industry which exposes it to abuse.
- Piracy / Counterfeiting is rife and enforcement agencies not coordinated.
- Unfair Contracts resulting in the perpetual signing away of their economic rights and the lack of updated industry contracts for freelance performers.
- Non - Payment of Royalties in the form of Repeat Fees and commercial exploitation for Actors.
- Non - Recognition of the Moral and Economic Rights of performers.
- Non - Ratification of Treaties that make provision for the recognition of the Moral and Economic Rights.
- Non - payment of Needletime royalty.
- Reciprocity regarding payment of royalties from other jurisdictions.
- Disputes not resolved speedily.
- The digital environment is not catered for in the Acts, (no ratification of digital Treaties)

Domestic Legal Framework

- South Africa like other jurisdictions enacted separately **Copyright Act, No: 98 of 1978** as a primary copyright statute, **Performers' Protection Act, No: 11 of 1967** and **Cinematograph Films Act, No: 62 of 1977** as a secondary statutes
- Eligible Copyright works:
 - Literary and musical works
 - **Sound Recordings – fixated performance**
 - Artistic works
 - Broadcasts
 - **Cinematograph Films – fixated performance**
 - Computer Programs
 - Published Editions and Programme carrying signal

Copyright defined.....

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works - **WIPO definition.**

Copyright is an exclusive right granted by the law to an author of literary and artistic works for a limited period (50 years) – **A general South African definition.**

Copyright is an exclusive right in relation to work embodying intellectual content to do or to authorize others to do certain acts in relation to that work, which acts represent the manners in which that work can be exploited for personal gain or profit – **Dr Dean's Handbook of SA Copyright Law.**

Neighbouring / Related Rights defined.....

Neighbouring or Related rights can simply be referred to as rights relating to performances. They are secondary rights in nature to copyright as they are usually fixated in the sound recordings or audio – visual works (films)

Copyright in a wider sense also includes related rights, especially the rights of: performers (actors, musicians and dancers), producers of phonograms and broadcasting organisations.

Once such performances are fixated in either sound recordings or audio visual works, the owner of sound recording or films generally exercises the control over the work for commercial purposes

Neighbouring rights enjoy protection in law (50 years in SA)

Right to **authorize fixation**, **economic right** and **moral right**

International Legal Framework

These WIPO international legal instruments grant Neighbouring / Related Rights:

- **Rome Convention, 1961 – Protection of Performers, Producers of Phonograms and Broadcasting Organizations**
- **WIPO Performances and Phonograms Treaty, 1999**
- **Beijing Treaty on the Protection of Audio – Visual Performances, 2012**

Cross - Referencing Provisions

- There is a need to cross-reference section 8 (cinematograph films) and section 9 (sound recordings) of the Copyright Act with section 5 of the Performers' Protection Act, 1967.
- This will enable the Portfolio Committee to stipulate how the performers will exercise **the right to authorize fixation of their performances.**
- This will enable the Portfolio Committee to pronounce how owners of sound recordings and films **must share royalty on the use of sound recordings and films with performers.**
- The Portfolio Committee will further introduce provisions establishing the **collecting societies for section 8 accordingly** in the same manner as we did when needle-time rights were introduced in 2002.

Collecting Societies

- **the dti** policy position is to introduce collective management in the **audio-visual sector** in the same manner as it has approached needle-time rights in sound recordings.
- Section 8 on cinematograph films will have to be amended to reflect establishment of collecting societies.
- It may pronounce how the right to authorize fixation of performance, right to share royalty on use of films. For needle-time rights, the legislature enacted section 9A establishing the collecting societies including tariff setting.
- Crafting of national legislation is always an opportunity to address **domestic challenges and needs of the industry.**
- It is also an opportunity to include provisions of **WIPO Treaties for ratification purposes.**

Directors Rights in Theatrical Productions

- There is a discussion at WIPO on the need to grant the **Directors in Theatrical Productions the rights due to the art, skill and effort put in directing theatre productions.**
- Russia introduced this topic at WIPO and has thus far requested a support from SA.
- If this topic gains support of WIPO member states and leads to a Treaty, it will obviously be a Neighbouring / Related Right.
- **Sound Recording** is a related right in many jurisdictions although SA declared it a copyright work under its primary Copyright statute.
- There is a growing appetite to grant other role players in the post production of audio visual fixation the rights (Designers, make-up stylists, editors, e.t.c)

Conclusion

- Secondary legislations dealing with Neighbouring / Related Rights must be carefully drafted to ensure that **no ambiguities exist.**
- Legislation on Neighbouring / Related Rights **cannot trump the primary copyright statute dealing with exclusive rights.**
- In **open market jurisdictions** with strong emphasis on private ownership the legislation may simply recognize the existence of the rights but leave it to right holders to organize themselves and form Collective Societies (in such cases a collecting society is formed on voluntary basis).
- **In planned economies or mixed systems** the Collecting Societies may be specifically regulated by statute (Copyright Act in our case) and may not be possible to form a voluntary or private society.
- **the dti in the process of the ratification of Treaties in collaboration with the Department of Arts and Culture (DAC).**



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THANK YOU