



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

STAKEHOLDER SUBMISSIONS AND RESPONSES

STAKEHOLDER	POSITION	ISSUES RAISED	RECOMMENDATIONS	RESPONSE BY THE DTI AND CIPC
1. National Association of Broadcasters (NAB)	Supports the objects of the Performers' Bill	<ul style="list-style-type: none"> ➤ Performers are a vital part of the film and television industry and the NAB supports initiatives to ensure that they are appropriately rewarded. ➤ The NAB notes that this Performers' Bill is being considered concurrently with the Copyright Amendment Bill (Copyright Bill). ➤ The NAB further notes that currently some of the provisions of the Performers' Bill are to be interpreted and understood with reference to provisions of the Copyright Bill. ➤ The Performers' Bill correctly deals exclusively with moral and 	<ul style="list-style-type: none"> ➤ Performers' Protection Amendment Bill ought to create an enabling environment for every-player in the content value chain. This requires a careful balancing of the rights and interests of all stakeholders. ➤ Extensive work is therefore required to revise the Copyright Bill, to address its many issues of concern. ➤ Indeed, the NAB believes that the Copyright Bill should be sent back to the National Assembly to review. ➤ The NAB strongly recommends that the Committee prioritise the Performers' Bill to ensure that matters pertaining to the economic rights of performers are addressed without any undue delays. This will also afford the Committee the opportunity to thoroughly consult on the 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The definition of a performer is in line with international best practice and stems from public participation and alignment to the Beijing Treaty on Audio Visual Performances which itself was negotiated with the understanding that extras and ancillary or incidental participants are excluded due to the nature of the performance and the rights being afforded. The definition nearly the same. ➤ The US Copyright Act defines performer as follows-The Copyright Act states that performing a

		<p>economic rights of performers, whereas the Copyright Bill deals with the broader scope of intellectual property rights across a spectrum of works, some of which have no bearing on performers</p> <ul style="list-style-type: none"> ➤ The NAB respectfully submits that, subject to its comments, the Performers' Bill is workable. In contrast, the Copyright Bill is fraught with problems, including major Constitutional concerns and implementation challenges. Various stakeholders have expressed serious concerns about the Copyright Bill. ➤ There is a significant risk that the Copyright Bill, if passed as is, would encounter legal delays and implementation difficulties. ➤ Given the underlying objectives of the Performers' Bill, the NAB wishes to avoid delaying its finalisation solely because of the problems with the Copyright Bill. ➤ Whilst there are overlapping areas in both Bills, the Performers' Bill may still be considered, processed and finalised independently from the 	<p>Copyright Bill, obtain subject matter expert input, and ensure that its significant flaws are addressed.</p> <ul style="list-style-type: none"> ➤ Proposes re-drafting of clauses 1, 3A, 4 and 6 ➤ A distinction must be made between a performer for purposes of the statutory rights and obligations and incidental participants who would not in context of the literary, musical or artistic works, be considered as a performer or 'member of the cast'. ➤ In order to ensure legal certainty, the NAB recommends the following definition of performer: <i>"an actor, singer, musician, dancer or other person who acts, sings, delivers, declaims, plays in, or otherwise viewed in context, performs literary, musical or artistic works, but does not include extras, ancillary participants or incidental participants"</i> <ul style="list-style-type: none"> ➤ On the reporting requirements, the NAB respectfully recommends that for ease of administration the section be revised to instead require an annual report of usage of the works and that such report be made available within a reasonable time after request from the performer, producer, copyright owner, the indigenous community or collecting society as the case may be. This section will be reinforced by the agreements provided for in clause 6, as the agreements will also address payments of royalties or equitable remuneration. 	<p>work "means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.: which is similar and does not create the impression like the PPAB that extras etc are included.</p> <ul style="list-style-type: none"> ➤ Other comments are well noted such as an annual report on the usage of works however lack of data capturing affects royalties. In light of actors dying as paupers, rebroadcasts, repeats, this is necessary. Systems should be put in place to record usage. Broadcasters do not know how much is being played. This is a governance issue-recording is important. There should be measurement of usage. ➤ The law intends to balance power relations of
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		<p>Copyright Bill. The current cross-referencing in the Performers' Bill is consistent with both the current provisions of the Copyright Act, and the proposed provisions in the Copyright Bill.</p> <ul style="list-style-type: none"> ➤ Therefore, irrespective of whether or not the Copyright Bill is enacted, the provisions in the Performers' Bill, once enacted will remain consistent with the current application of law. Should there be any terms which are neither defined in the Copyright Act nor the Performers' Protection Amendment Act, regard may be had to the ordinary meaning of the terms, as well as the meanings ascribed to them in the WIPO treaties from which these terms originate. ➤ The current definition of performer is rather broad and includes any person who acts, sings, delivers, declaims, plays in, or otherwise performs in any of the specified works. The NAB respectfully submits that a distinction must be made between a performer for purposes of the statutory rights and obligations and incidental 	<ul style="list-style-type: none"> ➤ Nab suggest that the proposed section prescribing the amount of the fine be redrafted to rather defer the determination of the fine to the Copyright Tribunal, and that each case will then be assessed on its own merits. ➤ The NAB therefore proposes the following wording for the proposed section 5(1B)(a) (clause 4(c)): <i>Any person who intentionally fails to submit a report as contemplated in subsection (1A) without good cause shown, shall be liable to pay a fine not exceeding R100,000 to be determined by the Copyright Tribunal.</i> ➤ The NAB respectfully recommends that the role of the Minister should rather be to guide on some of the specific items to be included in agreements concluded pursuant to the Performers' Bill once enacted. In order to ensure legal certainty, the NAB recommends that the provision be redrafted as follows: <i>without specifying the content of agreements, the Minister may make regulations prescribing a list of contractual terms which must be included in agreements entered into in terms of this Act.</i> ➤ The NAB further recommends that clause 3A(3)(a) be revised to read: <i>the written agreement contemplated in subsection 2 must at least address the list of contractual terms as may be prescribed.</i> 	<p>parties who own rights that can be commercially exploited. Minimum contractual terms need to be prescribed. Self-regulation should not be left to chance in the rampant economic exploitation.</p> <ul style="list-style-type: none"> ➤ Minimum contract requirements will be prescribed not the contract. ➤ The South African developmental agenda and historical deprivation informs the on-going equitable remuneration. ➤ The scope of the existing Copyright Tribunal has been extended to deal with any copyright matter currently the powers of the Tribunal are limited to those of licensing schemes only and the introduction of an alternative dispute system will assist the plight of many, also in relation to the in-depth content of both Bills a strengthened Tribunal is necessary. ➤ The regulations will provide clarity.
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		<p>participants who would not in context of the literary, musical or artistic works, be considered as a performer or 'member of the cast'. This distinction is especially crucial as it is only performers who have a statutory right to receive a royalty or equitable remuneration.</p> <ul style="list-style-type: none"> ➤ In South Africa, if there is a legal dispute about the interpretation of a performer's definition in the final Act, there is no such similar guidance of who is included or who is excluded (other than the DTI's recognition that "extras" are not included). This could result in disputes in interpretation, leaving the parties with no choice but to approach the courts to decide by applying the legal rules of interpretation. For purposes of legal certainty in South Africa it therefore makes sense for the legislature to expressly provide that guidance in the legislation itself. ➤ On reporting requirements, the NAB notes that clause 4(c) of the Performers' Bill seeks to insert a new subsection which requires any person who for commercial purposes intends to inter alia 		<ul style="list-style-type: none"> ➤ The process may appear burdensome, but it addresses a more serious challenge, that of authors, performers and copyright holders not having any rights to determine the use of their work. ➤ According to the dti the agreement is in fact not sufficient and authors and performers are not receiving their due, thus requiring a more formal recordal of usage.
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		<p>broadcast or communicate to the public an unfixed performance of a performer or copies of that performance fixed in an audio-visual fixation or sound recording, to "register" that act in the prescribed manner and form. The NAB respectfully submits that the proposed section is simply not practical when considering the vast volume of content that is broadcast.</p> <ul style="list-style-type: none">➤ The NAB supports the principle that performers must receive equitable remuneration in respect of their works➤ On fines, the NAB respectfully submits that the quantum of fines must be assessed and determined with reference to failure to comply with a specific section of the Amendment Act, once promulgated.➤ The NAB respectfully submits that it is undesirable for the Bill to adopt a blanket approach without considering the nuances from case to case. The NAB notes that the Copyright Bill proposes the establishment of a Copyright Tribunal which shall be empowered to inter alia		
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		<p>adjudicate any referral made to it in terms of any other relevant legislation and may make any appropriate order in respect of a referral</p> <ul style="list-style-type: none">➤ The amount of the fine should be proportionate to the severity of the act which is penalised. Given that this is a reporting requirement, the NAB submits that a maximum fine of R100,000 is appropriate.➤ On Compulsory and standard contractual terms, the NAB supports the principle that contracting parties must negotiate in good faith and that the written agreements must clearly provide adequate protection of the rights of the respective contracting parties.➤ The NAB submits that whilst it may not be the intention of the legislature, the current wording may be interpreted to mean that the Minister must prescribe the content of the compulsory and standard contractual terms		
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<p>2. Netflix</p>	<p>Not in agreement with the Bills in their current form</p>	<ul style="list-style-type: none"> ➤ It is of vital importance that the legislative framework governing copyright and performer's rights strikes the right balance in protecting the needs of all industry stakeholders. It is also important for there to be legal certainty and clarity so that all parties are able to properly regulate and manage their own affairs ➤ There are numerous instances where the Copyright Bill as well as the Performers Protection Bill suffer from vagueness and ambiguity. The use of overlapping terms and definitions (i.e. "audiovisual works" and "cinematograph film" in the Copyright Bill and the use of "audiovisual fixation" and "fixation" in the Performers Bill), and the use of overlapping sections in both the Copyright Bill and the Performers Bill (i.e. section 8A in the Copyright Bill which deals with the authors' share in royalties in audiovisual works is extensively covered in the Performers Protection Bill), are some of the examples of this difficulty and are issues which 	<ul style="list-style-type: none"> ➤ 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ With respect to both Bills the terminology was amended and work on the terminology was completed in conjunction not only with a panel of experts but through the extensive public participation of both Bills. The terminology is Consistent and updated according to trends and developments. ➤ Impact assessments were conducted on both Bills as well as policy positions underpinning the amendment to the legislation as early as 2009. ➤ The Constitutional aspects of the Bills have been checked through the legal process of Parliament as custodians of the Bills, before the Bills were introduced into Parliament Constitutionality was checked by the State Law Advisors. ➤ The Bill does not address collective bargaining but
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		<p>should be addressed to ensure a consistent approach</p> <ul style="list-style-type: none"> ➤ It is crucial to ensure that the copyright law operates to ensure that the South African film and television industry continues to be a vibrant and thriving industry, filled with talent and experienced in telling South African stories ➤ Netflix understands the need for and applaud the efforts to modernize the Copyright Act 98 of 1978 ("Copyright Act") and the Performers Protection Act 11 of 1967 ("Performers Act"). However, the proposed reforms are seriously flawed in several ways, including: <ul style="list-style-type: none"> (a) The impact and consequences of significant changes to the scope of copyright protection and remunerations schemes have not been adequately studied and evaluated. It is dangerous to overhaul these key laws upon which the creative industries rely on without knowing its impact on those industries. 		<p>the mechanism can be beneficial to performers. It is not within the scope of mandate of the dti. Collective Bargaining addresses labour related matters and unions.</p> <ul style="list-style-type: none"> ➤ The author approaches Tribunal when the commissioned work is no longer used. The position provided for in the Bill allows the author remedies in the instance on non-use. The author can approach the Tribunal for the use of the work none other than its original use. The Bill provides for this. ➤ The policy position taken is that even though rights are transferred the performer should be remunerated. This is in line with international best practice in regions as the EU. ➤ The payment of royalties for 25 years is because the performance continues to attract royalties. The performer must be remunerated.
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		<p>(b) Many proposed provisions in the Copyright Bill and the Performers Bill give rise to constitutional concerns, which should be resolved prior to adoption and final implementation. Otherwise the creative industries, authors and performers will suffer significant uncertainty until the courts determine the constitutionality of the provisions.</p> <ul style="list-style-type: none"> ➤ There appears to be no through policy analysis of a number of the significant changes introduced through the Copyright Bill and the Performers Bill in respect of audiovisual works and the payment of royalties in respect of such works. ➤ There is thus no clear policy underpinning these changes to the Copyright Act and the Performers Act and as there is no apparent policy justification for these changes, the attendant consequences of such changes and the objectives to be attained through the introduction of such changes, the Copyright Bill and Performers Bill are vulnerable to being challenged for its inclusion 		<ul style="list-style-type: none"> ➤ There has been past injustices and loopholes. Broadcasters were not required to pay. This closes the developmental gap and addresses the rights of actors. ➤ Minimum contract requirements will be prescribed not the contract. ➤ The South African developmental agenda and historical deprivation informs the on-going equitable remuneration.
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		<p>of arbitrary and constitutionally unjustifiable provisions.</p> <ul style="list-style-type: none"> ➤ The Copyright Bill and the Performers Bill have also not undergone any impact assessment on their respective economic and social impact ➤ The Draft National Policy on Intellectual Property (IP) of South Africa ("Draft National Policy"), which supported the CRC report's recommendations,⁴ also recommended that adequate impact assessment studies should be conducted before any international treaties are ratified, or implemented, to determine the exact impact of ratification on South Africa. The same should apply for the revision on the Copyright Bill and Performers Protection Bill. ➤ As one of the aims of the Copyright Bill and of the Performers Bill appears to be the protection of industry participants from past exploitative practices, it is essential that the changes introduced to give effect to this requirement be 		
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		<p>comprehensively tested and assessed in order to definitively determine that these measures will have the desired effect</p> <ul style="list-style-type: none"> ➤ The Copyright Bill and the Performers Bill incorporate various provisions of the WIPO Performances and Phonograms Treaty ("WPPT"), the WIPO Copyright Treaty ("WCT") and the Beijing Treaty on Audiovisual Performances ("Beijing Treaty") without Parliament ratifying all international treaties. However, there has been no review of the treaties by the Department of Justice and Constitutional Development ("DOJACD"), the Department of International Relations and Cooperation ("DIRCO"), the Department of Trade and Industry ("dti") and Parliament which are all necessary steps for ratification. ➤ The random incorporation of selected portions of international treaties, in the Copyright Bill as well as in the Performers Protection Bill, does not meet the necessary constitutional requirements and is at risk of being set aside. The Copyright Bill and the Performers 		
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		<p>Protection Bill are also susceptible to constitutional challenges on a number of other grounds relating to unjustifiable deprivation of property rights and the placement of unjustifiable limitations on the freedom to trade.</p> <ul style="list-style-type: none">➤ Regarding royalties payable in respect of literary and musical works, the proposed amendments would introduce a complicated remuneration system that is likely to be impractical, burdensome and impose legal uncertainty. Hence, this section, as currently drafted, is likely to severely impact ability to develop South African literary materials into audiovisual works which, in turn, would likely result in less authentic South African storytelling. This provision should instead allow for more flexibility, including by incentivising the use in collective bargaining agreements of terms pursuant to which, for instance ongoing bonus-payments or other forms of ongoing royalties.➤ Collective bargaining agreements are a better path to balancing interests of talent and		
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		<p>producers, rather than legislation creating royalty payments – but in any event legislation should embrace alternative approach as long as the result is obtained.</p> <ul style="list-style-type: none">➤ Section 8A of the Copyright Bill and sections 3A and 5(1A) of the Performers Bill would create an equally unworkable - if not even more burdensome - approach to the remuneration of performers including actors, dancers, musicians, recording artists and dubbing performers.➤ For Netflix, this issue is not whether to remunerate performers fairly but rather how. As noted above, our preferred approach is by means of collective bargaining agreements between producers and trade unions representing writers, director, performers and other creative contributors. Netflix recognise that such systems may not be well developed in many countries, including South Africa. In such cases, the law should incentivise rather than foreclose.		
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		<ul style="list-style-type: none">➤ The law should make provision for collective bargaining agreements to be considered as a means of fulfilling remuneration requirements, including the onerous recordation and registration obligations set out in these provisions. Section 8A of the Copyright Bill and sections 3A of the Performers Bill as proposed are very broad and would constitute a serious deterrent to investment in the audiovisual sector in South Africa. They risk actually reducing opportunities for talented South Africans.➤ The extension of royalties for "any use" is not in accordance with industry practice. The custom of royalty payments in the music industry has been established, but in the film and television production sector different practices apply, such as the payment of upfront buy-out fees, the payment of residuals or the payment of repeat fees.➤ The payment of royalties or an equitable remuneration for "any use" is also not in alignment with the Beijing Treaty which provides that performers will be		
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		<p>entitled to a royalty or equitable remuneration in relation to the performer's rights in relation to the "making available", "broadcasting" and "communication to the public</p> <ul style="list-style-type: none">➤ In the absence of any definition for the term "equitable remuneration", there is no legal certainty as what this entails. Nor is there any clarity as to the manner in which reasonable compensation is to be determined in practice. As there are no guidelines for the determination of an "equitable remuneration", it is inevitable that copyright owners may be delayed or precluded from exercising their rights in an audiovisual work until any disputes in respect of what is an "equitable remuneration" have been resolved (or possibly referred to the Tribunal for final determination).➤ The new sections 6A and 8A of the Copyright Bill would severely erode the rights of producers in that authors or performers who had previously divested their rights in a literary, musical or audiovisual work will now be		
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		<p>entitled to claim the payment of a royalty in respect of any of the acts set out in sections 6 or 8 of the Copyright Act. The payment of the royalty will be at the expense of the copyright owner who prior to the coming into effect of the Copyright Amendment Act, 2019 did not have such an obligation.</p> <ul style="list-style-type: none">➤ A further difficulty with the provisions of sections 6A and 8A of the Copyright Bill is that they do not allow for any flexibility in respect of the choice of the remuneration model as the sections only contemplate the payment of a percentage of royalties. The Copyright Bill fails to recognise that a percentage of royalty payments model may not be practical where there are multiple copyright assignments in a work as is the case with an audiovisual work which by its very nature is a composite work comprised of multiple copyright assignments.➤ The Copyright Bill also fails to take cognisance of the fact that authors and performers may in many instances prefer to receive a large upfront lump sum		
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		<p>payment as opposed to the payment of an ongoing percentage of royalties, the amount and frequency of which will be uncertain and variable due to the numerous dependencies associated with royalty payments.</p> <ul style="list-style-type: none">➤ The non-alignment of section 8A with the Beijing Treaty results in a failure to strike an equitable balance between the rights of performers on the one hand and the rights of copyright owners on the other and this should be remedied by amending section 8A to provide that a royalty or equitable remuneration will only be payable to a performer in relation to "making available", "broadcasting" and "communication to the public" and that such remuneration may be fulfilled by means residual (royalty payments) pursuant to a CBA.➤ Netflix is of the view that the change in the default position that the person commissioning the audiovisual work owns the audiovisual work will result in legal uncertainty and that the changes introduced by the new		
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		<p>section 21(3) will inevitably lead to disputes, including costly and time-consuming litigation</p> <ul style="list-style-type: none">➤ The exclusive rights granted to performers in terms of section 3(4) and specifically the rights set out in sections 3(4)(c)-(h) of the Performers Bill, are in conflict with the statutory rights granted to the copyright owners of audiovisual works (as well as the statutory rights granted to copyright owners of sound recordings), as per the provisions of the Copyright Act. In this regard, the requirement under the Performers Bill that the authorisation of a performer is necessary in relation to any reproduction of an audiovisual fixation is in stark contrast with the existing provisions of section 8 of the Copyright Act, which provides a copyright owner with the exclusive rights to, inter alia, reproduce or authorise the reproduction of an audiovisual work➤ The Copyright Bill and the Performers Bill raises certain constitutional concerns which will render both the Copyright Bill and the Performers Bill subject		
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		<p>to potential constitutional challenge.</p> <ul style="list-style-type: none"> ➤ The constitutional concerns arise in respect of two distinct possible contraventions of the Constitution, namely a possible violation of section 25(1) of the Constitution²⁸ in that a number of the provisions in the Copyright Bill and the Performers Bill amount to a deprivation of property rights and a possible violation of section 22 of the Constitution in that certain provisions in the Copyright Bill and the Performers Bill unjustifiably interfere with the right to freedom of trade 		
3. Sarah	<p>Raises objection to the Bill (does not specify whether she is referring to Copyright Amendment Bill or the Performers Protection Amendment Bill or both).</p>	<ul style="list-style-type: none"> ➤ Would like to lodge my formal objection to the passing of the bill and request that more time is given for industry players to critique it and give input. ➤ It is alarming to realise that this Bill is set to go through so quickly with so little time for the public to engage with the content and comment in a meaningful way ➤ The Bill in its current form is confusing and does not align with international precedent 		<ul style="list-style-type: none"> ➤ Noted both Bills are for creation of a conducive enabling environment for all Copyright and relates rights stakeholders which represent vast groups and rights, further the Bills required updating.

		<ul style="list-style-type: none"> ➤ Request that that the bill is suspended and redrafted to ensure it protects the rights of the artists and supports economic activity in the creative industries. ➤ Overall, don't believe that the Bill has the creative industry's best interests at heart and needs slowing down and rethinking. 		
4. Thandi Nkosi	Raise objections to the Bill	<ul style="list-style-type: none"> ➤ Ask that the bill is suspended and redrafted to ensure it protects the rights of the artists and supports economic activity in the creative industry 		<ul style="list-style-type: none"> ➤ Both Bills support economic activity and have been amended through public participation processes and a panel of experts. ➤ The South African developmental agenda and historical deprivation informs the on-going equitable remuneration.
5. Cliffe Dekker Hofmeyr (on behalf of Moonlighting Films Proprietary Limited)	Not in agreement with certain aspects of the Bill)	<ul style="list-style-type: none"> ➤ One of the stated intentions of the Performers' Protection Amendment Bill ("Performers' Bill") is to "provide for performers' economic rights". Moonlighting respectfully submits that this will not be achieved by the proposed amendments for reasons stated in this submission. 	<ul style="list-style-type: none"> ➤ Moonlighting recommends that the retrospective nature of the Bills be removed ➤ Moonlighting recommends that the Bills allow for contractual freedom as opposed to a prescribed model which would allow parties to adopt a "buy-out" mechanism whereby any future royalty / residual / profit share is incorporated into the up-front payment. Parties could 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ This clause protects a vulnerable party who contracted him or herself out of the rights afforded by the Act by allowing that vulnerable party to say – "This is an unenforceable term so I remain protected". However,

		<ul style="list-style-type: none"> ➤ The Bills contains several provisions, such as clause 39B of the Copyright Amendment Bill, which inhibits contractual freedom and impose compensation models that are out of kilter with international best practice in the film industry. ➤ Moonlighting is of the view that should the Bills come into effect, there will be a significant reduction in the number of foreign projects that come to South Africa, as the Bills contain several conditions that remove certainty and do not confirm to international best practice. This is likely to result in South Africa becoming a less desirable location for international film projects ➤ The Copyright Amendment Bill also grants the Minister powers to prescribe a mandated royalty compensation methodology to be used in the industry, such that both the producer and the actor have no choice but to contract under the prescribed methodology. ➤ Moonlighting is certain that their clients will resist this model, as 	<p>still also enter into an arrangement based on royalties should the parties wish to.</p> <ul style="list-style-type: none"> ➤ Moonlighting recommends that the impact of the Bills on various industries including the film industry is carefully considered. Should the Bills nevertheless be passed in their current form then, the film and media industry is given a special exemption or a special sectorial determination that will permit a 'buy-out' model 	<p>paragraphs (b) and (c) allows a settlement agreement and a service licence to exclude the protection afforded by the Act.</p> <ul style="list-style-type: none"> ➤ The Constitutional aspects of the Bills in regards to the exceptions and limitations have been checked through the legal process of Parliament as custodians of the Bills, before the Bills were introduced into Parliament Constitutionality was checked by the State Law Advisors. ➤ The law intends to balance power relations of parties who own rights that can be commercially exploited. Minimum contractual terms need to be prescribed. Self-regulation should not be left to chance in the rampant state of economic exploitation. ➤ The royalty model does not extend beyond actors. This is in line with South Africa's objectives and the Beijing Treaty.
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		<p>they prefer the aforementioned "buy-out" model, which is international best practice, as opposed to the royalty model. The cast would also be compromised as they would receive a conditional royalty (only payable in the future) as opposed to a guaranteed, known up-front payment for services rendered.</p> <ul style="list-style-type: none"> ➤ Moonlight note further that the royalty model extends beyond actors to include all film personnel who are the authors / owners of some form of copyright work used in the film. ➤ Moonlighting also submits that this too will not be acceptable for international clients as it is international standard practice for these film crew to receive a fixed, weekly fee in full and final consideration for their services and contributions. Furthermore, no organisation exists that could calculate, collect, track, report and pay the royalties, and even if such an organisation is formed, Moonlighting's international clients would be reluctant to take on the 		<ul style="list-style-type: none"> ➤ The definition of a performer is in line with international best practice and stems from public participation and alignment to the Beijing Treaty on Audio Visual Performances which itself was negotiated with the understanding that extras and ancillary or incidental participants are excluded due to the nature of the performance and the rights being afforded. The definition nearly the same. ➤ The US Copyright Act defines performer as follows-The Copyright Act states that performing a work "means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible which is similar and does not create the impression like the PPAB that extras etc are included.
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		<p>administrative burden in this regard.</p> <ul style="list-style-type: none"> ➤ Another major cause for concern is the retrospective provisions contained in the Bills in relation to royalties. While legislation applying retrospectively is not prohibited under the South African Constitution, one of the founding values of the constitution is the rule of law. The rule of law includes legal certainty and there is a presumption against retrospective provisions and where legislation expressly provides for retrospective application, these are interpreted restrictively and are subject to judicial review where the retrospectivity of the legislation may be declared unconstitutional ➤ Moonlighting submits that the retrospective application of certain provisions of the Copyright Amendment Bill shall create immense uncertainty in the film industry and limit rights that parties had at the time when they entered into these contracts and runs the risk of giving rise to constitutional challenges. It will 		<ul style="list-style-type: none"> ➤ The regulations will provide clarity. <p>The process may appear burdensome, but it addresses a more serious challenge, that of authors, performers and copyright holders not having any rights to determine the use of their work.</p> <ul style="list-style-type: none"> •According to the dti the agreement is in fact not sufficient and authors and performers are not receiving their due, thus requiring a more formal recordal of usage.
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		<p>in many cases be impractical and impossible to facilitate royalties for projects which ended years ago, where the intellectual property has years ago been exported outside of South Africa and is owned by Foreign Film Companies abroad</p> <ul style="list-style-type: none">➤ A proper impact assessment that carefully considered the effect of the Bills on different industries and sectors including the film industry has not been done, alternatively has not been made publicly accessible and available➤ Moonlighting supports any legislative changes that will empower South Africans and transform the local film industry. We believe that the current draft of the Bills does not serve to achieve these ends, as the Bills contain several clauses which will inhibit contractual freedom and cause international projects to go elsewhere, thereby giving rise to material loss of foreign investment and local employment in the film industry.➤ Moonlighting respectfully therefore requests		
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		government to revisit and redraft sections of the Bill.		
6. Uzanenkosi	Not support the Bills	<ul style="list-style-type: none"> ➤ The Performers Protection Amendment Bill is an admirable objective. ➤ It is only challenged by its attempt to strengthen a chain by looking at only one link ➤ The Protection of Performers Amendment Bill as it stands, risk international productions coming to the country only for our crews and none of our performers. 		Noted. There are many factors taken into account when developing legislation investment is one of them, developmental goals, rights and obligations need to be balanced during this and the Bill addresses the plight of many who have been exploited and require legal redress which is in line with developmental goals and treaties.
7. South African Music Industry Council (SAMIC)	Not in agreement with certain aspects of the Bills	<ul style="list-style-type: none"> ➤ In order to strengthen the Performers Protection Amendment Bill, there is a need to consider the following: <ul style="list-style-type: none"> - Establishment of advisory body to advise the Ministers of DTI, Dept. of Communications and telecommunications, and Arts and Culture on creative industry related matters. - The establishment of the creative industries or music industry regulatory body, in order to regulate not just collecting societies only in South Africa but also: e.g - the managers, promoters and industry event organizers as well as others, which is where the 		Noted on the Advisory Body and can be investigated out of the legislative process.

		business of music is. NB, Exploitation is beyond high.		
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8. Recording Industry of South Africa (RISA)	Not in agreement with certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The viability of the South African recording industry will be diminished if certain provisions in the two draft Bills are enacted into legislation ➤ The negative impact will primarily be felt by up and coming young South African musicians, fewer of whom will be offered recording contracts, and by small and medium sized record companies who will not have the financial strength to continue to invest in new recordings by young artists to the same extent as they are currently able to do. ➤ Whilst RISA welcome and share the aims of the bills in seeking to protect creators, there are a number of serious concerns regarding the provisions in the Bills, which could have very harmful unintended consequences for all participants in the creative sectors ➤ Concerned that the South African copyright law would not be aligned with the international copyright treaties the 	<ul style="list-style-type: none"> ➤ Recommends that section 3A (3)(c) should be deleted. Alternatively, this section should be amended ➤ Recommends that SECTION 8a(1) should be deleted or alternatively amended to permit a performer to be remunerated by way of a single payment for a performance in an audio-visual fixation of less than ten minutes duration instead of a royalty ➤ Recommends that sections 8D and 3A(3)(a) of the PPAB should be removed ➤ Recommends that section 39B should be deleted ➤ Recommends that section 1(i)(b) should be deleted ➤ Recommends that sections of the Bill should be amended to make it clear that the intention of the provision is to ensure accurate reporting by licensed users ➤ Recommends deletion of section 12A ➤ Recommends that the exception provided for under section 12 B(2) (c) of the CAB should be removed from the draft bill ➤ Proposed quotation exception in section 12B(1)(a) should be removed from the draft bill ➤ Recommends that the Bills are retagged as section 76 bills 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ At International level, WIPO has concluded a treaty (BTAP) which grants performers economic rights, South Africa is aligning its Copyright Act and related legislation with this international Treaty. The South African performers for a long time have been exploited through a single payment system which is often not market related. The policy position is introducing a royalty based model to ensure continuous earning from the protected performance which is commercialised. Clause 8A is a transformational provision to address the exploitation issues. ➤ It is a policy position that the contract should be written to address the exploitation (3A(3)(a). The current provision on

		<p>government, rightly, wishes to join. It is essential to address these shortcomings before the bills are adopted.</p> <ul style="list-style-type: none"> ➤ The serious concerns RISA members have with some of the provisions in the Bills relate to the following <ul style="list-style-type: none"> - The reversion of the performers' exclusive rights after a maximum period of 25 years, thus creating confusion and conflict with the exclusive rights of producers under section 9 of the Copyrights Amendment Bill (CAB) - The exclusion under section 8a of CAB of the possibility for non-featured performers to receive a lump sum payment for their once-off performance in an audio-visual fixation - The power delegated to the Minister to prescribe compulsory and standard terms including the power to prescribe royalty rates under section 39 (c) constitutes serious and undue regulatory intervention into the freedom of the parties to contract 	<ul style="list-style-type: none"> ➤ Recommends that section 3A(3)(c) should be deleted from the PPAB to prevent any constitutional vagueness in the Bill ➤ Recommends that section 3A(3)(c) should be deleted from the PPAB to prevent arbitrary deprivation of property ➤ Section 8D (3) should be deleted from the PPAB ➤ Section 8(2)(f) should be deleted 	<p>consenting to the fixation are deeming provisions.</p> <ul style="list-style-type: none"> ➤ The exceptions in 12A are for South Africa's developmental objectives which linked to various aspects such as education and general access to information and knowledge which will foster innovation and creativity in South Africa and cannot be removed from the Bill. ➤ This clause protects a vulnerable party who contracted him or herself out of the rights afforded by the Act by allowing that vulnerable party to say – "This is an unenforceable term so I remain protected". However, paragraphs (b) and (c) allows a settlement agreement and a service licence to exclude the protection afforded by the Act. ➤ The Constitutional aspects of the Bills regarding the exceptions and limitations have been checked through the legal process of Parliament as
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		<ul style="list-style-type: none"> - The restriction of the parties' freedom to agree to waive or modify a right or protection afforded by CAB, which also constitutes a serious and undue regulatory intervention into the freedom of the parties to contract - Definition of technological protection measure section 1(i)(b) that undermines the effective protection of technical measures, fight against the most serious forms of piracy and the business model of music streaming - Failure to clarify that the provisions under section 9a (1)- (Ab)of CAB are intended to ensure accurate reporting by licensed users - The introduction of a broad "fair use" exception into South African law which negatively impact on the exclusive rights of both performers and copyright owners - Quotation exception in section 12 B(1)(a) which is overly broad and not compatible with three step test 		<p>custodians of the Bills, before the Bills were introduced into Parliament Constitutionality was checked by the State Law Advisors.</p> <ul style="list-style-type: none"> ➤ In the past decade policy makers and commenters across the world have called for copyright reform based on the fair use model in the US. So far Israel, Liberia, Malaysia, Philippines, Singapore, South Korea, Sri Lanka and Taiwan have adopted fair use regimes or similar variants. ➤ The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their
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		<ul style="list-style-type: none"> - Failure of section 12B (2)(c) to clarify that it would apply only where the stored copy (a) is made from a copy acquired lawfully and owned by the individual, (b) the stored copy may be accessed exclusively by that user and (c) the sole beneficiary of the exception is the user and not the provider of the storage service - Incorrect tagging of the Bills as section 75 Bills which may make them liable to be set aside as constitutionally invalid - Unconstitutional vagueness caused by section 3A(3)(c) of the PPAB when read with section 9 of the CAB - Unconstitutional deprivation of property caused by section 3A (3) (c) of the PPAB of the rights afforded to owners of sound recordings in section 9 of the Copyright Act - Unconstitutional delegation of plenary legislative power to the Minister in section 8D (3) of the PPAB - Unconstitutional deprivation of property caused by 		<p>legislation to fair use models.</p> <ul style="list-style-type: none"> ➤ The policy position taken is that even though rights are transferred the performer should be remunerated. This is in line with international best practice in regions as the EU. ➤ The payment of royalties for 25 years is because the performance continues to attract royalties. The performer must be remunerated. ➤ There has been past injustices and loopholes. Broadcasters were not required to pay. This closes the developmental gap and addresses the rights of actors.
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		<p>section 8(2) (f) of the PPAB by providing that persons may use a performance without the performers' authorisation, in circumstances in which the exceptions under the Copyright Act apply; and</p> <ul style="list-style-type: none"> - Unconstitutional limitation on performers' rights to freedom of trade, occupation or profession under section 22 of the Constitution 		
<p>9. International Federation of Film Producers Association</p>	<p>Not in agreement with certain aspects of the Bills</p>	<ul style="list-style-type: none"> ➤ Concerned that the short amount of time granted for public comments to the Committee regarding Copyrights Amendment Bill (CAB) is insufficient to allow for the requisite depth in addressing many salient problematic issues that the Bill as drafted presents ➤ Both Bills would require additional impact assessments and legislative debate ➤ Many of the Bills' provisions as drafted may have unintended consequences that would be contrary to their policy goals and be harmful to the growth of local creative industries and international trade in copyright works 	<ul style="list-style-type: none"> ➤ The clause on twenty-five-year term limit on any assignments of copyright (22) (b)(3) should be deleted ➤ The clauses on Perpetual royalty right for authors (New sections 6A,7A,8A) should be re-examined in detail ➤ On new section 28P, the language should be substantially revised, taking into account the international legal standard ➤ Clauses on licensees permitted to conclude sub-license agreements without licensor's consent (23 (c) (8) should be substantially redrafted ➤ Section 12a should be deleted altogether ➤ The clause on ban on contractual override (39B) should be attenuated or deleted as it constitutes a clear case of regulatory overreach 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The limitation on the assignment is important and with respect to the reversion of the copyright these are not new provisions as other jurisdictions apply in a similar way. UK, Spain and Canada. Our model is based on the US and supported by the CRC which allows a limitation on the transfer (assignment) of rights. In the US an author may choose to terminate the transfer after 35 years. The period is sufficient for

		<ul style="list-style-type: none"> ➤ Support the call of allied copyright industries organizations in South Africa for the Bill to be substantially redrafted and for differentiated impact assessments to be conducted on each creative sector in order to avoid the unintended negative consequences that the bill in its current form would wreak on South Africa's vulnerable creative sectors ➤ Want to draw the attention of the Committee to the fact that there are a number of unresolved issues regarding legal consistency between the Copyright Amendment Bill and Performers' Protection Amendment Bill ➤ The following are the clauses in the CAB that the federation think are most problematic from the standpoint of the audio-visual sector and that it believes would require significant amendments or outright deletion: <ul style="list-style-type: none"> - Twenty-five-year term limit on any assignments of copyright (22) (b)(3) - Perpetual royalty right for authors (New sections 6A,7A,8A) 	<ul style="list-style-type: none"> ➤ The clauses on vesting of Copyright in works made under the direction/control of the state (5 (2),22(2),23(1)) should be re-examined and harmonized ➤ The clauses on overbroad ministerial powers to mandate agreements and royalty rates (6A(7)(B) should be re-examined and substantially amended 	<p>assignee to recoup commercial investment.</p> <ul style="list-style-type: none"> ➤ The exceptions in 12A are for South Africa's developmental objectives which linked to various aspects such as education and general access to information and knowledge which will foster innovation and creativity in South Africa and cannot be removed from the Bill. ➤ In terms of overbroad ministerial powers, the regulations will be drafted in conjunction with industry. ➤ This clause protects a vulnerable party who contracted him or herself out of the rights afforded by the Act by allowing that vulnerable party to say – "This is an unenforceable term so I remain protected". However, paragraphs (b) and (c) allows a settlement agreement and a service licence to exclude the protection afforded by the Act.
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		<ul style="list-style-type: none"> - Legitimation of parallel importation and introduction of international exhaustion rights (14(6)) - Undermining of technical protection measures (TPMs)- New Section (28P) - Licensees permitted to conclude sub-license agreements without licensor's consent (23 (c) (8)) - Unchecked expansion of exceptions to copyright, including a new, untested, open-ended US-style "fair use" defence (12a, 12d (1), 12d (2), 19 (c), 19 (c) (2), 19 (c) (3), 19 (c) (4)) - Ban on contractual override (39B) - Vesting of Copyright in works made under the direction/control of the state (5 (2),22(2),23(1)) - Overbroad ministerial powers to mandate agreements and royalty rates (6A(7)(B)) 		<ul style="list-style-type: none"> ➤ The authors have been deprived of the right to their royalties. This provision aims to ensure royalties are paid for creative work. In the music industry, provision was made, however not specific and it was abused.
10. M-Net and Multichoice	Not in agreement with certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The Protection of Performers Amendment Bill requires minimal amendments in several 	<ul style="list-style-type: none"> ➤ The Copyright Bill should be replaced with a Bill that imposes a coherent and economically sustainable framework that will allow for the continued 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The term producer was defined and considered in the context of sound

		<p>discrete respects before being passed</p> <ul style="list-style-type: none"> ➤ The Copyright Amendment Bill, by contrast, is an ill-conceived and poorly drafted piece of legislation, which if promulgated, will likely lead to legal uncertainty, litigation and most importantly, further impoverishment of the very people that it seeks to benefit and protect ➤ Endorses the drafting proposals on the Bill which have been developed and submitted to the Select Committee by the National Association of Broadcasters and urge the Committee to adopt those proposals ➤ The definition of “producer” is unclear ➤ The definitions of “copyright management information”, “technologically protected work”, “technological protection measure”, and “technological protection” cross-refer to definitions in the Copyright Act. This is undesirable because the Copyright Bill may in fact not be passed or may be amended in time. 	<p>investment in and exploitation of copyright works in this country</p> <ul style="list-style-type: none"> ➤ The Committee should conduct a further round of oral hearings. ➤ Recommend that all performer protections be removed from the Copyright Bill- they are already included in the PPA Bill. ➤ Recommend that all retrospectivity provisions contained in the Copyright Bill be removed, failing which the Copyright Bill will almost certainly be subject to constitutional challenge ➤ Recommend that the Copyright Amendment Bill should not proceed in its current form 	<p>recordings and audio visual works to which they play different roles. This definition was for the creation of clarity in the legislation and stemming from public participation on advertised clauses by the PC of Trade and Industry.</p> <ul style="list-style-type: none"> ➤ The South African developmental agenda and historical deprivation informs the on-going equitable remuneration. ➤ Sufficient consultations have taken place over a number of years on both Bills. Oral public hearings took place. The stakeholders were consulted each time Parliament advertised sections of the Bill.
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		<ul style="list-style-type: none">➤ M-Net and Multichoice have concerns regarding the following proposed sections of the PPAB:<ul style="list-style-type: none">- Section 5 (1A)- Section 5(1B)- Section 5(5)- Section 8(D)➤ The Copyright Bill creates legal uncertainty because it seeks to confer protection rights on performers, which ought to be done within the strictures of the PPA➤ Those provisions of the Copyright Bill that seek to extend rights to performers and authors retrospectively are unconstitutional➤ Proposed new s6A and 8A are accordingly so narrow and inflexible that they are unworkable and un-businesslike➤ M-net and Multichoice are concerned that with the introduction of the new royalty provisions, the Copyright Bill undermines the conditions needed for local television production investment to thrive➤ The Copyright Bill rigidly and excessively interferes with the parties' freedom to conclude contractual arrangements appropriate for the respective		
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		<p>parties, their business models and their sector.</p> <ul style="list-style-type: none"> ➤ The Copyright Bill seeks to replace parties' contractual autonomy with inflexible mandatory contractual provisions and assumes a one size fits all scenario. It is these flaws that make the Bill unworkable in M-net and Multichoice's context. 		
11. ANDRÉ MYBURGH	Not in agreement with certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The Cabinet resolved on 5 December 2018 that South Africa should accede to WCT, WPPT and the Beijing Treaty. This motion has been introduced to Parliament and is on the agenda of the Portfolio Committee for Trade & Industry in the National Assembly on 26 February 2019. ➤ The members of the Panel of Experts of the Portfolio Committee for Trade and Industry of the National Assembly to advise on legal aspects of the Copyright Amendment Bill all advised that there were deficiencies in the Bills' compliance with these treaties. ➤ Some of the deficiencies were corrected by the withdrawal of certain proposed sections and of 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. ➤ The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad

		<p>certain proposed deletions, but many others, notably in relation to the copyright exceptions and the protection of technological protection measures and copyright management information, were not adopted, leaving the Bills non-compliant with WCT and WPPT.</p> <ul style="list-style-type: none"> ➤ All members of Panel of Experts raised concerns of compliance of the construct of copyright exceptions appearing in the Bill and their compliance with the Three-Step Test. These new exceptions in the Bill are incorporated by reference in the Performers Protection Amendment Bill. ➤ There is no indication that either or the Portfolio Committee took the Three-Step Test into account in developing and adapting the 'fair use' provision in the new Section 12A and the new copyright exceptions in Sections 12B, 12C(b), 12D, 19B and 19C, together with their expanded application as a result of the contract override clause in new Section 39B. This failure causes a material risk of South Africa coming into conflict with its obligations under the Berne Convention and TRIPs, and also 		<p>exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries.</p> <ul style="list-style-type: none"> ➤ There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models. ➤ The importance of the resale royalty and comment and amendments have improved its functionality in the Copyright Amendment Bill-supported by stakeholders.
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		<p>that South Africa will not be ready to accede to WCT and WPPT.</p> <ul style="list-style-type: none"> ➤ Computer programmes are deemed to be literary works under Berne and WCT, and WCT therefore requires the 'digital rights', namely the exclusive rights of 'communication to the public' and 'making available' to be extended at least to computer programmes. This does not appear in the Bill. ➤ There remains no consequential amendment to the criminal sanction provision in Section 27 following the introduction of the exclusive rights of 'communication to the public' and 'making available', which applies to all other unauthorised exercise of the other exclusive rights with guilty knowledge. This omission has been drawn to the Portfolio Committee's attention, but not dealt with, with no explanation ➤ The consequences of the obligations under National Treatment, to which South Africa is bound under the Berne 		<ul style="list-style-type: none"> ➤ This clause protects a vulnerable party who contracted him or herself out of the rights afforded by the Act by allowing that vulnerable party to say – "This is an unenforceable term so I remain protected". However, paragraphs (b) and (c) allows a settlement agreement and a service licence to exclude the protection afforded by the Act. ➤ The authors have been deprived of the right to their royalties. This provision aims to ensure royalties are paid for creative work. In the music industry, provision was made, however not specific and it was abused. ➤ All international agreements provide countries with the policy space especially with regards to matters regarding public interest. ➤ The Bills comply with minimum protection requirements in terms of the Berne Convention,
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		<p>Convention and TRIPs, and which also appear in WCT, WPPT and the Beijing Treaty, do not seem to have been considered in devising Sections 6A, 7A and 8A or their predecessors in the Original Bill (which were provisos to the exclusive rights in Sections 6, 7 and 8).</p> <ul style="list-style-type: none"> ➤ The definitions of ‘technological protection measure’ and ‘technological protection measure circumvention device’ are insufficient to meet the requirements of Article 15 of WCT, Article 18 of WPPT and Article 15 of the Beijing Treaty, which all require “adequate legal protection.” ➤ Section 19D does not include any of the content required by Article 4 of the Marrakesh VIP Treaty, since the right to make accessible format copies for persons with a disability is open to “any person or organisation serving the disabled”, whereas the treaty limits that act to “authorized entities” and “a primary caretaker or caregiver” acting on behalf of a Beneficiary, in terms of Article 4. It therefore 		<ul style="list-style-type: none"> ➤ The Bills define TPMs in accordance with the WIPO treaties. ➤ In terms of 19 D the qualifying word is prescribed which means the regulations qualify which entities are applicable. ➤ The specific issues involving sections have been debated and addressed in the PC. The Bill has been amended and improved significantly. The Panel of experts also worked on the Bill. ➤ There is overall alignment with Treaties and Berne convention 3 step test. ➤ In future, if there are concerns after implementation, there will be future legislative reviews.
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		<p>fails to meet the conditions for a copyright exception or limitation permitted by the Marrakesh VIP Treaty and, in the circumstances, will not meet compliance under the Three-Step Test either.</p> <p>➤ The most notable errors remaining in the Bill, despite the advice of the Panel of Experts, are:</p> <ul style="list-style-type: none">- The new express rights of remuneration for authors, composers and artists coupled with government regulation, which may well prove unworkable since their conceptualisation and drafting do not take into account the situations applying to multi-author works, nor can they effectively govern works that are compilations of a variety of copyright-protected material from different kinds of copyright works and from different authors.- The retention in the Bill of remuneration rights for performers in Section 8A(1) to (4). The topic of		
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		<p>remuneration of performers in audiovisual works should be dealt with in the Performers Protection Amendment Bill (in respect of which see para 3.2 below)</p> <ul style="list-style-type: none">- The 25-year limit on assignments of copyright in literary works is not a true reversionary right, as stated in the Memorandum of Objects, but is attached to the Copyright Act's provisions relating to the formalities for deeds of assignment and exclusive licences. This results in not only the relative provision - which is simply a new proviso to section 22(3) - expanding across a wide variety of copyright works for which it was never intended (judging from the recommendations of the Copyright Review Commission), but there are also no substantive provisions that govern the intended reversion of rights, namely the disposition of rights of the copyright owner and the re-acquisition of		
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		<p>rights by the original author or authors</p> <ul style="list-style-type: none">- The compulsory licences for reproductions and translations in Schedule 2 are linked to the provisions of the Copyright Act dealing with the formalities for licences, instead of being an expansion of the exceptions. Michelle Woods of WIPO offered the solution to correct this mistake, namely by making an appropriate adjustment to one of the proposed exceptions in the new section 12B (which was otherwise not compliant with treaty obligations), yet it was never taken up.- The resale royalty right, although permitted by the Berne Convention, is not a right of copyright as such, but a separate, distinct set of rights which, in other legislation internationally, usually appears in legislation separate from the relevant copyright law or at least a separate chapter of copyright legislation. Its coupling as an extension of the exclusive rights relating		
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		<p>to artistic works mean that other provisions of the Copyright Act will now apply to it in circumstances that are unworkable. A case in point is the reference to the resale royalty right in the prerequisites for benefitting from the orphan works exception, which will have a serious impact on the trade of second-hand goods</p> <ul style="list-style-type: none"> - The renaming of “cinematograph films” in the Copyright Act, “audiovisual works”, which, with the relative new definition, broadens the term without explanation and also does not amend related legislation that depends on this definition, namely the Registration of Copyright in Cinematograph Films Act. - The transitional provisions. The fact that the Intellectual Property Laws Amendment Act, Act 28 of 2013, has not been brought into operation after 5 years, with no final decision on its fate, compels the need for transitional provisions, which are necessarily imperfect. 		

<p>12. Writers Guild of South Africa (WGSA)</p>	<p>Not in agreement with certain aspects of the Bills</p>	<ul style="list-style-type: none"> ➤ It is with great concern that WGSA has seen that the Copyright Amendment Bill B Version has grouped screenwriters and screenplays for film and television under literary works, and that they are not represented under the audio-visual section at all. There is a huge difference between literary works – books – and screenplays, not only in content and layout, but in commissioning, copyright and exploitation. As such, they have to be clustered in the audio-visual section, and the intricacies of Intellectual Property and Copyright of story creators and screenplay writers and the exploitation thereof has to be looked at individually. ➤ A further huge omission in the bill is that royalties have now been allowed for performers and "authors" of the audio-visual works (the producers, who sign the development and production contracts with the broadcasters as "authors" of the work), but not for the screenwriters and story creators. Again, this is in conflict with international best practice, 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The Intellectual Property regime needs to be understood in this context, the work produced by screenwriters cannot be placed under the audiovisual sections of the Performers Protection legislation as this deals specifically with performances. ➤ The works of screen writers are literary in nature and comply within the requirements set out in the Copyright Act. It may be noted that problems experienced with this sector may rather be contractual in nature as it relates to compensation as opposed to being included in the audio visual sector. ➤ Screenwriters are as said the story creators which is a literary work. ➤ Clause 6A the work being a literary work is covered in this clause which establishes a royalty based model.
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		<ul style="list-style-type: none">➤ S12 A (a) iv - allowing "fair use" of complete works, be they literary or audio-visual, in education will have severe financial implications for literary authors, and authors/producers of especially documentary films. While WGSA support the use of these works in education, the total expropriation of earning potential for the writers and producers is not fair and needs to be looked at.➤ Regarding clause 12.6 - the implications of this clause mean that, after a first broadcast or exhibition, a film or TV series loses all its copyright and can be watched/shown by everybody without any further payment. This affects the livelihood of the writers/producers of such a works, as their IP and copyright is made worthless and unexploitable by this clause.➤ Regarding s19 D 1 (c) - making audio-visual productions professionally accessible for blind persons – specifically through the use of audio description (AD) – has to be done professionally and involves training and an expertise which		
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		<p>is still extremely rare in this country.</p> <p>Restricting this business to non-profit organisations conflicts with the Competition Act. Doing AD is a profession and practitioners and their companies should be allowed to benefit from their work.</p> <ul style="list-style-type: none">➤ Regarding s22 B - the whole of this section needs to be relooked as the use of the term "author" for the screenwriter or literary author is continuously confused with the author of an audio-visual work, namely the producer. While this may be seen as a matter of semantics, it is, in fact, a hugely problematic issue, not just with copyright issues, but also in contracts and the payment of royalties and residuals. It is proposed that a legal semantic difference between these two "authors" is created - perhaps something like "auteur" for the writer and "author" for the producer?➤ Regarding s28 P – this section negates just about all the protection afforded by 28 O. This needs to be looked at.		
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		<ul style="list-style-type: none"> ➤ Regarding s28 S(b) - Ignorance should not indemnify somebody who has committed a crime. It doesn't in normal law, so why should it in copyright issues? It is the duty of the consumer to check if there is copyright ➤ on a work, even if there is no copyright notice. 		
13. Universities South Africa (USAf)	Not in agreement with certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Regarding exceptions for people with disabilities and the Marrakesh Treaty- USAf welcomes the provisions for people with disabilities, as the current Act has no provisions for them at all. It is necessary and urgent that these provisions be enacted, so that SA can ratify the Marrakesh Treaty to ensure that reciprocal cross-border sharing of accessible formats is guaranteed. ➤ On limitations and exceptions for education and research- USAf supports the limitations and exceptions for education and research, as these are our core functions. The current Act has not been amended since 1978, and hampers access to information, innovation, and access to information for teaching and research 	<ul style="list-style-type: none"> ➤ Recommends that a brief and specific amendment to the copyright law be considered in 2020 to address these relevant digital issues. 	<ul style="list-style-type: none"> ➤ Noted as provisions in the CAB were supported. ➤ Digitisation is addressed in the Bill to some extent. Other aspects may be provided for in other applicable legislation such as the ECTA. Future amendments can be considered.

		<p>purposes, as well as scholarly communication and publishing</p> <ul style="list-style-type: none">➤ On limitations and exceptions for libraries, archives, museums and galleries- USAf supports the provisions in the Bill for libraries, archives, museums and galleries as these play integral roles in tertiary institutions and enable access to information in a digital environment, which our current copyright law does not. The provisions also enable archives, libraries and related entities to carry out their mandates to collect and preserve collections and our cultural heritage for future generations.➤ On fair use- USAf supports the fair use provisions in the Bill and welcomes the flexibility to address digital technologies and future advancements and changes in technology as we move into the Fourth Industrial Revolution.➤ USAf welcomes the provisions for preservation for libraries and related entities, but notes that “digitisation” is not mentioned or defined, despite it being the		
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		<p>necessary form of preservation to ensure access and preservation of material, to ensure protection of collections and our cultural heritage. Tertiary libraries house extremely rare and valuable collections, so digitisation is paramount for preservation and accessibility, for now and for the future. USAf recommends that for clarity, it may be advisable to include definitions for “digitisation” and “digital”. “Digitisation” should be mentioned in the provisions for libraries, archives, etc. relating to preservation and online accessibility</p> <p>➤ USAf would also warn against too restrictive Digital Rights Management (DRM)/Technological Protection measures (TPMs) which restrict access to information, e.g. block text to speech software for blind people; prevent browsing of online databases for purchasing purposes by libraries, etc. The exceptions for education, research, libraries, disabled persons, etc. should enable access to information, without restriction, and/or allow</p>		
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		<p>DRMS/TPMs to be bypassed for lawful uses in terms of this Bill.</p> <ul style="list-style-type: none">➤ USAf welcomes the inclusion of the exception to allow deposits of scholarly manuscripts in institutional repositories. This is line with policies of many publishers and funders, internationally and locally, e.g. the National Research Foundation, and will make publicly funded resources more accessible to the public who pays for them through their taxes.➤ USAf is aware that these matters have not been included in this Bill but will need to be addressed at some stage in the future. Recently Clauses 11 and 13 of the EU's Copyright Proposals were approved, despite strong and wide opposition from stakeholders. It may be advisable for your Committee, the DTI and other relevant entities to monitor the EU's situation carefully and to do some research on these issues before including them in our copyright law, as they will impact on all users of the Internet		
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		<ul style="list-style-type: none"> ➤ USAf welcomes the long-overdue regulation of Collecting Societies that fall under the umbrella of the Copyright Alliance ➤ USAf hopes that the Bill will be approved by the NCoP as soon as possible, and sent for signature to President Ramaphosa before the May elections. The tertiary and library sectors, with thousands of authors and creators in their employ, as well as people with disabilities, urgently need the exceptions in the Bill to improve access to information and enable their staff and students to engage fully in their teaching, learning and research, so as to increase resource-sharing, creativity, innovation and scholarly publishing 		
14. Unisa Press	Not in agreement with certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The proposed 'fair use' clause, amending Section 12 and 13 of the principal Act, the 'Fair Use' clause is expanded and this overrides the concept of 'exceptions' and broadens fair use to copying for course packs and any other educational purpose. 		<ul style="list-style-type: none"> ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations

		<ul style="list-style-type: none"> ➤ The fact that authors' rights and publishers' rights to earn an income from their creations are made subordinate to users' rights to duplicate their material without consent or payment, imply that the CAB could be: <ul style="list-style-type: none"> a. In contravention of the International Berne Convention, to which South Africa is a signatory. b. A possible contravention of 'The Agreement on Trade-Related Aspects of Intellectual Property Rights' (TRIPS) an international legal agreement between all the member nations of the World Trade Organization (WTO), signed by South Africa. c. That the Bill as it stands could negatively portray South Africa's legal standing, internationally- as potentially in breach of two agreements which it had signed. ➤ Publishers are contractually bound to protect the copyright of authors, as well as to pay royalties to them based on sales. The CAB changes will directly negatively impact on publishers' ability and authors to earn an income on content, as well as on the value we added as publishers (by enhancing the content via editing, layout and 		<p>were found to be consistent with the three step test and other legal instruments.</p> <ul style="list-style-type: none"> ➤ The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. ➤ There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and
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		<p>overall presentation in a professional publication format).</p> <ul style="list-style-type: none"> ➤ CAB will allow technology companies 'free access' to content that publishers (university Press in this context) and universities have paid for using public money. ➤ The Copyright Amendment Bill makes the pursuit of copyright infringements tricky and costly ➤ South African authors will need to reconsider whether it is safe for them to publish with any South African publisher, given that their copyright is no longer protected within the proposed CAB (apart from loss of income). ➤ South African publishers' ability to attract authors will be directly affected ➤ Scholarly and Academic Presses, which Unisa Press forms part of play a critical role in developing and disseminating original thought and research, not only of South Africans but that of the global community. They play a meaningful role in shaping the futures by allowing 		<p>Kenya are currently amending their legislation to fair use models.</p>
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		<p>differing minds to make available their meaningful thought through books and journals, in return are rewarded in a way of royalties and recognition. Passing this Bill in its current form and nature will 'de-centives' this population of the society, in the same manner it will de-centivise the scholarly publishing community. This cannot be good for public good.</p>		
15. Simon Pienaar	Proposed amendments require further elaboration	<ul style="list-style-type: none"> ➤ The summary of the proposed amendments on the Committee Notice Details require further elaboration, there is no indication of whether they will be positive or negative effects. Who will these amendments serve? Some seem redundant, for example, SAMRO is already accredited, what further accreditation will serve their mission? ➤ Prevent SAMRO and similar institutions from being used as slush funds first. Start guarding and nurturing the recorded and written expressions of South Africa's people more jealously - because it has actual value - before attempting to implement a slew of amendments to the Copyright Bill. 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ Currently SAMRO has not been accredited by the Companies and Intellectual Property Commission (CIPC) and is not regulated by the CIPC, only one Collecting Society is currently being regulated by the CIPC hence the legislative amendment to empower the CIPC to regulate all Collecting Societies in terms of the Bill to ensure compliance not only with the Copyright legislation but the Companies Act as well. ➤ It is now an offence to operate as the collecting society without being accredited.

<p>16. The Cultural and Creative Industries Federation of South Africa (CCIFSA)</p>	<p>Not in agreement with certain aspects of the Bills</p>	<ul style="list-style-type: none"> ➤ The definition of craft work should, in our view, include the words “the making of decorative or practical objects by hand...” This will broaden the definition to include craft work that may not be specified in the definition. ➤ Welcomes the efforts of the Department of Trade and Industries (DTI) to modernise the archaic Copyright Act 98 of 1978 (ACT) through the publication, for comment, of the Copyright Amendment Bill 2015 (Bill). ➤ CCIFSA recognises the urgency of finalising the processes and speedily enacting the legislation. ➤ However, CCIFSA believes that the 30 day period within which the affected industries are required to provide comments on the Bill may be inadequate especially for an organisation which represents over 45 different sectors which are all impacted by the Bill ➤ While CCIFSA welcomes the proposal to vest orphan works in the state in perpetuity, it is concerned that nothing is said about the license fees or royalties that will accrue to the 	<ul style="list-style-type: none"> ➤ CCIFSA recommends that provision be made for the proceeds of orphan works to be reinvested in the funeral and pension schemes for creative workers as well as in the development and growth of the cultural and creative industries. CCIFSA therefore propose the establishment of a cultural development fund ➤ CCIFSA recommends that the status quo must be maintained in respect of submission of sound recordings by record companies to broadcasters without the need for prior consent provided that in circumstances where there is a dispute between broadcasters and owners of sound recordings relating to the payment of royalties, the broadcasters should be forced to pay ➤ Recommend that Where owners of sound recordings are paid an amount pending the final determination of the rate, such owners (or where they are represented by a collecting society such collecting society) must pay 50% of the said amount to the relevant performers or their collecting society less agreed administration fee. ➤ CCIFSA recommend the introduction of a private copy levy which will be used to ensure that our artists do not die as paupers while their work is being copied freely even if it's for private use 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ Some submissions made are on 2015 version of the Copyright Amendment Bill, therefore it is a challenge to respond, the definition of craft works has been deleted as a result of the 2015 public comment process. ➤ The provision of one collecting society per set of rights has been removed from the Bill. ➤ The introduction of a private copy levy is the introduction of a tax and the process of a money bill was debated, in addition further research and impact studies needs to be conducted and may be considered for a future amendment, the South African context needs to be taken into account devices will be more expensive like a cellphone or tablet etc. ➤ All comments are noted as most provisions are supported.
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		<p>state from the exploitation of orphan works</p> <ul style="list-style-type: none">➤ While CCIFSA accepts that State organs must own copyright in works fully funded by it, the proposed amendment does not distinguish between fully funded works and partially funded works. In CCIFSA'S view, the ownership should be proportionally equal irrespective contribution of the parties involved.➤ CCIFSA welcomes the proposed amendments to Section 6 and suggests that some enforcement mechanism should be created to ensure compliance with the provisions of this section.➤ While CCIFSA understands the need to create a mechanism to ensure that broadcasters seek prior permission for the use of sound recordings, CCIFSA believes that such a requirement will make it almost impossible for broadcasters to operate and may lead to broadcasters choosing a few record companies to work with that can give them advance permission to the exclusion of many		
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		<p>independent record companies and artists. The unintended consequence of this proposed amendment is that Section 9A right will end up benefiting a few “connected” record companies.</p> <ul style="list-style-type: none">➤ CCIFSA believes, however, that broadcasters may, as an example, be forced to pay a minimum percentage to owners while the parties are negotiating the license. An example may be broadcasters being forced to pay 3% in accordance with the judgment by the Supreme Court of Appeal (in the case of National Association of Broadcasters vs. SAMPRO case number 119 of 2013) until matters are resolved by agreement or by the Copyright Tribunal or by the Courts➤ CCIFSA is aware of the DTI's proposal of one collecting society per right. CCFISA don't subscribe to one collecting society per right in a developmental state. DTI is urged to take counsel on this issue.➤ CCIFSA further believe that all copyright collecting societies		
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		<p>must be registered, and regulated under 9B to 9F, including those societies/organisations collecting repeat fees and royalties in the film and television industries.</p> <ul style="list-style-type: none"> ➤ ACCIFSA supports 100% the proposed provisions of the new 10A and suggests that if these provisions are opposed by broadcasters on the basis that they should be dealt with under Independent Communications Authority of South Africa (ICASA) and the Department of Communications (DoC), CCIFSA proposes that these provisions be discussed and incorporated in the licenses of broadcasters with the assistance of DoC and ICASA ➤ While CCIFSA understands the need to create an exception for legitimate non-commercial uses, CCIFSA believes that the creators and performers of literary and musical works should be compensated through a private copy levy. In many jurisdictions, private copy exceptions are inextricably linked to private copy levy. 		
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		<ul style="list-style-type: none">➤ CCIFSA's view on the introduction of private copy exception in relation to sound recordings, is that DTI should serious consider the harm this will cause especially if such private copying exception is not accompanied by a private copy levy as is the case in Europe, USA and parts of Africa such as Burkino Faso, Ivory Coast and Senegal (see the attached survey).➤ Private copy levy must be introduced in exchange for these exceptions otherwise artists are denied a livelihood under difficult economic conditions.➤ While CCIFSA believe that there should be some exception for the use of copyright protected works for educational purposes, it believes that there should be some nominal compensation by institutions to encourage creators to continue creating the works.➤ CCIFSA welcomes the introduction of the Beijing Audio-visual Treaty provisions in the Bill and suggest that these rights		
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		<p>should be administered collectively to increase the bargaining power of performers. This society must also be regulated in the same way of the music related collecting societies.</p> <ul style="list-style-type: none">➤ CCIFSA welcomes the insertion of this Section which provides some clarification on the return of the rights and the royalties. What is still not clear is what happens to the fees if unclaimed for more than 5 years after the expiration of the license? We suggest that a structure or collecting society be established to license and receive royalties for orphan works and such royalties, if unclaimed, must be paid over to the cultural development fund➤ CCIFSA supports the new provisions establishing the Intellectual Property Tribunal, On condition is established in relation to the works of the federation (CCIFSA) as the only custodian of the creative cultural industries in South Africa. CCIFSA believe this will ensure speedy resolution of disputes in intellectual property matters.		
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		<p>However, we believe that the Tribunal should have the powers to include experienced practitioners in the relevant areas of intellectual property (copyright, trade-mark, design, patents etc.) to assist the Tribunal in making its determination appointed by CCIFSA and the relevant ministries</p> <p>➤ CCIFSA welcomes the proposed provisions relating to translation of works published in printed or analogous forms but suggests that prior notice be given to the creators of the works.</p>		
17. UCT PRESS	Object to certain aspects of the Bills	<p>➤ The proposed 'fair use' clause, amending Section 12 and 13 of the principal Act: this overrides the concept of 'exceptions' and broadens fair use to copying for course packs and any other educational purpose. Since the books we produce are largely for an academic market they are likely to be disproportionately suitable to an educational purpose.</p> <p>➤ As proposed in the Bill, the source of the work reproduced and the name of the author shall</p>		<p>➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. The exceptions and limitations are welcomed by many</p>

		<p>be indicated 'as far as is practicable', which in effect would make it optional to cite the author's name, creating the possibility of denying author recognition and probably leading to plagiarism. It is not clear who would determine what is 'practicable', and again it seems that it would be up to the author/scholar to prove this at his/her own cost.</p> <p>➤ Foreign publishers enter into contracts with us to print and distribute their books in South Africa at the more affordable local price because South Africa is a signatory to the Berne Convention, and because they are assured their copyright is protected. Under the new 'fair use' provisions, which permit copying for educational and library purposes, and which therefore go against the Berne Convention, they would refuse to license our distribution of their books, which would deny South Africans access to international scholarship. But not just this – many local authors, writing on locally based research, choose to publish with international presses, and if these presses</p>		<p>and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models.</p>
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		<p>refused to allow their books to be distributed in South Africa, this locally relevant material too would be denied to South Africans.</p> <ul style="list-style-type: none">➤ PhD theses are a major source of subject matter that is developed and expanded for book form, for publication by scholarly presses. The latest findings from CREST show that there has been a large increase in the number of PhD theses being produced, which we welcome. However, this work will become unavailable to South Africa as academics choose to publish outside South Africa in order to protect their copyright.➤ The 'perpetual and un-assignable right to a royalty' clause would prevent arrangements such as those UCT Press has with its authors. These include delaying the payment of their royalties until sales of their books cover the production costs. In addition, many scholarly works are collections of chapters by different contributors put together by General Editors: it is these General Editors who receive any royalties, not the		
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		many contributors, since this would make such works financially unviable.		
18. Wits University Press,	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The proposed 'fair use' clause, amending Section 12 and 13 of the principal Act: this overrides the concept of 'exceptions' and broadens fair use to copying for course packs and any other educational purpose. Since the books we produce are largely for an academic market they are likely to be disproportionately suitable for an educational purpose. Permissions, reprint and electronic rights deals provide additional book publishing income to supplement publishers' bottom lines. For South African scholarly publishers, income from rights deals for secondary and tertiary educational prescriptions is a significant form of cross-subsidising (usually loss-making) specialist scholarly titles. ➤ As proposed in the Bill, the source of the work reproduced and the name of the author shall be indicated 'as far as is practicable', which in effect 	<ul style="list-style-type: none"> ➤ The Committee should reconsider provisions relating to academic publishing in the CAB 	<ul style="list-style-type: none"> ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill

		<p>would make it optional to cite the author's name, creating the possibility of denying author recognition and possibly leading to plagiarism. It is not clear who would determine what is 'practicable', and again it seems that it would be up to the author to prove that their copyright has been infringed upon.</p> <ul style="list-style-type: none"> ➤ The 'perpetual and un-assignable right to a royalty' clause goes against traditional publishing agreements, in which the royalty rate is negotiated between the publisher – responsible for taking the financial risk of publication – and the author. ➤ An 'un-assignable right to royalty' is not the international norm, and this costly provision could lead to decreased publishing opportunities for South African academics, thus contradicting government policies for increased research dissemination. ➤ Some of the provisions in the Copyright Amendment Bill would have a particularly negative effect on academics, and on the 		<p>contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models.</p>
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		country's aims to develop and internationalise South African research outputs. University presses, who are striving against all odds to become self-sustaining in a depressed economy, are likely to be faced with closure, which would open the way for larger international publishers to take ownership of South African research		
19. South African Development Book Council	Not in agreement with certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The Copyright Amendment Bill is the wrong legal instrument to redress access to writing and books in South Africa. ➤ The Copyright Amendment Bill cannot address issues of transformation, ownership, writing and reading. The Copyright Amendment Bill is however important as a balance between the needs of creators and producers on the one hand, and users on the other ➤ The Copyright Amendment Bill will not, through its application, be able to distinguish between foreign-owned works, and locally owned and produced works. It will not distinguish between an imported work, versus a work produced by a black author or 	<ul style="list-style-type: none"> ➤ Hope that the National Assembly will call for the adoption of a National Book Policy so that issues of redress and access to books are substantially dealt with. 	<ul style="list-style-type: none"> ➤ All comments are noted. ➤ The Bill address literally works which forms part of writing. ➤ Comments on fair use are provided above.

		<p>publisher in South Africa. The emerging, indigenous language author will be exposed to the same measures of the Bill as the well-established, highly successful Western author.</p> <ul style="list-style-type: none">➤ The SABDC welcomes and agrees to the principles of increasing access and finding balance between creators and user needs, especially within the context of South Africa.➤ The Act however does not allow the SABDC to support these principles fully due to conflicting clauses.➤ The SABDC asserts that copyright must protect the rights of all rights owners not only musicians and performers but authors, publishers and other creatives as well.➤ Copyright must negotiate sensible exceptions with all stakeholders to provide genuine access to the public in order to encourage socio-economic and cultural growth and innovation.➤ The ambiguity and the room to interpret the Bill differently is to the detriment of creators.		
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		<ul style="list-style-type: none"> ➤ The four factors for Fair use – being 12A. (b). i-iv) indeed allows for the protection of copyright owners. However, this protection is eroded when read with Section 12A to 12D, as it will not prevent anyone from using copyrighted materials without remunerating rights holders. Including education in the general exceptions for Fair Use is a challenge. It's important that this clause be read with Section 12 A-D. 		
20. Marcus Low	Support some provisions of Copyright Amendment Bill	<ul style="list-style-type: none"> ➤ Appeal to members of the committee to pass section 19D of the bill (General exceptions regarding protection of copyright work for persons with disability) and various other sections in their current form. ➤ Section 19D, in its current form, has the potential to revolutionise the lives of many blind people in South Africa by increasing access to books and bringing an end to the so-called book famine. ➤ Section 19D of the Copyright Amendment Bill provides for elegant domestication in South Africa of the Marrakesh Treaty 		<ul style="list-style-type: none"> ➤ All comment are noted as the provisions commented on are supported.

		<ul style="list-style-type: none">➤ The fast uptake and domestication of the Marrakesh Treaty by a number of governments, including industry-friendly governments such as the United States, indicates that governments do not see the domestication of the treaty as posing a threat to copyright holders. The Committee members are urged to keep this in mind when representatives of the publishing industry make alarmist statements suggesting that the reforms will undermine the rights of copyright holders.➤ In relation to fair use/fair dealing, the Committee is urged to disregard alarmist assertions by special interest groups that the proposed framework will harm copyright holders. Quite apart from the inherent merits of the proposed provisions, it should be considered that countries with flexible fair use provisions in law, such as the United States, have thriving creative industries. It should also be kept in mind that fair use does not in any way legitimise piracy, since piracy is by definition not a form of fair use		
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		<p>and suggesting that it is would be disingenuous.</p> <ul style="list-style-type: none"> ➤ The Committee is urged to consider that ending the book famine is a matter of extreme urgency for persons who are blind and that the amendments proposed in section 19D are thus similarly urgent. If the proposed section 19D provisions are enacted, and South Africa becomes a party to the Marrakesh Treaty, blind people in South Africa will overnight have access to many thousands more accessible format books than is the case now due to the ability to exchange accessible format copies across borders. This will make an immediate difference to blind students and blind persons struggling to get hold of books they require for educational, professional or recreational reasons – all of which will make it easier for persons who are blind to take part in the cultural and professional life of our society. 		
21. Scientific Technical and Medical	Not in agreement with certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The provisions of the new Section 6A are newly introduced by the B-Bill, providing for a right 	<ul style="list-style-type: none"> ➤ Section 12D (7) should be withdrawn from the B-Bill entirely. 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ 12D (7) is a policy position as public funds are being

<p>Publishers (STM)</p>		<p>for authors to a royalty in relation to works where they have assigned the copyright, which right cannot be assigned or waived. This provision has the potential to undermine the investments publishers make in scholarly communication to the detriment of the authors the provision is intended to benefit. Authors of articles meant for scholarly journals assign the copyright to publishers in return for the services publishers provide.</p> <ul style="list-style-type: none"> ➤ The provisions of new Section 6A, coupled with the contract override provision in new Section 39B will, in addition to interfering in long-standing and well-functioning relationships between South African scholarly authors and their publishers where no reasons or explanation for these consequences arising from this change appear in any of the Bill's Memorandum of Objects, the Socio-Economic Impact Assessment System (SEIAS) Report that preceded introduction of the Bill, or in the deliberations of the National Assembly, also endanger the continued existence of South 	<ul style="list-style-type: none"> ➤ Section 6A should be deleted in its entirety 	<p>utilized for the work and therefore the State would not want to bar access to works it funded.</p> <ul style="list-style-type: none"> ➤ The authors have been deprived of the right to their royalties. This provision aims to ensure royalties are paid for creative work. In the music industry, provision was made, however not specific and it was abused hence the inclusion of 6A. ➤ This clause protects a vulnerable party who contracted him or herself out of the rights afforded by the Act by allowing that vulnerable party to say – “This is an unenforceable term so I remain protected”. However, paragraphs (b) and (c) allows a settlement agreement and a service licence to exclude the protection afforded by the Act.
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		<p>African scholarly societies, which, in general, simply have no budget to allocate any part of their income from sales of their journals to authors where their authors do not seek royalties.</p> <ul style="list-style-type: none">➤ From STM's perspective, Section 6A should be deleted in its entirety. An alternative solution must be found to support those authors who may be identified by sound economic impact assessment to have been disadvantaged by granting assignments of copyright without fair remuneration, that keep out of its scope academic authors of articles written for publication in STM journals.➤ The new Section 12D(7) not only undermines the rights of authors and publishers, but also denies authors academic freedom. STM believes that authors should have the right to choose the journal in which they publish and the method in which they publish. A choice to publish in an Open Access journal – of which there are many in South Africa and around the world – is as valid and legally supportable as		
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		<p>a choice to publish in a journal published for subscription.</p> <ul style="list-style-type: none"> ➤ There is no rationale or explanation for this provision in either the Memorandum of Objects to the B-Bill² or the SEIAS report,³ nor was this deliberated by the Portfolio Committee. ➤ The proposed legislation could be substantively improved. It currently falls short of fully addressing the concerns of industries that depend on copyright. ➤ We request that the B-Bill be referred back to the National Assembly for reformulation before it is reconsidered. 		
22. Quinton Fredericks	In support of the Bill	<ul style="list-style-type: none"> ➤ Currently reviewing the Bill and is interested in making oral representation. 		Noted.
23. Pen Afrikaans	Not in support of the Bill	<ul style="list-style-type: none"> ➤ The main concern is that, as it stands, the Bill, which ironically purports to benefit authors of copyright work, threatens their livelihood and drastically curtails their existing rights through the introduction of extremely wide-ranging exceptions to and 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this

		<p>limitations of copyright protection</p> <ul style="list-style-type: none"> ➤ Recognise the importance of exceptions and limitations, but Pen Afrikaans is concerned that the Bill goes too far, effectively expropriating existing property and disincentivising authors from creating new works ➤ There are serious concerns about the legislative procedure followed, the constitutionality of the Bill and its adverse impact on reading, writing and publishing in South Africa ➤ Many of the changes to the Copyright Act introduced by the CAB will have a direct and detrimental effect on all South African authors ➤ The Bill is not in line with the international copyright treaties that SA has acceded to and in all probability also runs contrary to the Constitution ➤ Pen Afrikaans is opposed to: <ul style="list-style-type: none"> - The procedure through which the Bill is being railroaded through Parliament - The introduction of “fair use” - The introduction of wide-ranging exceptions to copyright protection, among 		<p>matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright</p>
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		others for educational purposes		regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models. ➤ the dti cannot comment on the process of Parliament.
24. European Union Delegation to SA	Not in agreement with certain aspects of the Bills	<ul style="list-style-type: none"> ➤ EU welcomes the insertion of a resale right in the SA copyright regime ➤ Current drafting of s7B (4) lacks clarity. ➤ It is difficult to understand what s9A on sound recordings intends to do, since it seems to establish an exclusive right to authorize the broadcasting of phonograms, in a way that would oblige broadcasters to license the rights of every single phonogram they intend to broadcast ➤ On s12A on fair use, EU thinks that the introduction of this new principle would be negative for the copyright regime in SA and would not improve it despite being the main objective of the reform. 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ Further Clarity on 7B(4) may be provided for the regulations, as long as the empowering provision is clear. ➤ Broadcasters operate on a blanket license model in South Africa. ➤ Section 9A provides for the strengthening of regulation for the sound recordings. It also provides for the recordal of music works and the penalties for failure to do so. It also provides clarity on the extent of the royalty.
25. Independent Music	Object to certain aspects of the Bills	➤ IMPRA objects to the provisions of the Section of the proposed	➤ It is recommended that the Bill is revised to take into consideration the	➤ Comments are noted.

<p>Performers Rights Association</p>		<p>CAB which provides as follows: “The Commission shall only register one collecting society for each right or related right granted under copyright”.</p> <ul style="list-style-type: none"> ➤ IMPRA appeals to the Committee to delete the section of the Bill in its entirety. ➤ IMPRA’s submission on the Performers Protection Amendment Bill is that, it does not take into consideration the Intellectual Property Law Amendment Act, 2013 and it also makes reference to provisions in the Copyright Act, 1978 which are not yet in force. 	<p>amendments already effected by the IPLAA in the PPA.</p> <ul style="list-style-type: none"> ➤ Clarity should be provided with respect to the premature adoption of the Beijing Treaty without any impact assessment study having been done. ➤ The alignment of cross- referencing between the PPA and the CAB is desirable for legal certainty. 	<ul style="list-style-type: none"> ➤ The provision of one collecting society per set of rights has been removed from the Bill. ➤ The PPAB should have provisions aligned to BTAP and ratification should follow later. Provisions of international treaties are required to be included in domestic legislation aligned with the policy objectives. The Beijing Treaty with several other WIPO treaties have all be considered and analysed. South Africa is not adopting the BTAP prematurely. ➤ Cost-Benefit analysis was done in WCT, WPPT and BTAP and joining these treaties were recommended.
<p>26. NBC Universal</p>	<p>Object to certain aspects of the Bills</p>	<ul style="list-style-type: none"> ➤ Request that the current legislative process is paused and that time is given to understand the context of all affected sectors and that the interests of creators, artists and innovators whom are affected by these proposals are considered on a sector by sector basis. 	<ul style="list-style-type: none"> ➤ Respectfully recommends that the Committee recommends that progress on the Bills is paused and that they are returned to the National Assembly ➤ Sufficient time should be given for a redrafting process that includes international and credentialed experts, ensuring compliance with international treaties and best practice 	<ul style="list-style-type: none"> ➤ Impact assessments were conducted on both Bills as well as policy positions underpinning the amendment to the legislation as early as 2009. ➤ Different processes of participation

		<ul style="list-style-type: none"> ➤ Without such a detailed review and impact assessment, it will be hard to see how NBC Universal can continue to invest in South Africa. 		<p>which included many experts, these amendments are critical and the legislation is severely outdated. South Africa is attending to its developmental needs and objectives as well as creating updated legal frameworks that start taking cognizance of digital aspects which the Act doesn't have at all.</p>
<p>27. Google South Africa ("Google")</p>	<p>Support the Bill without the need for further amendment.</p>	<ul style="list-style-type: none"> ➤ Google believe the Copyright Amendment Bill is on the right track to fulfill Parliament's stated goals of aligning copyright with the digital era and with developments at a multilateral level. ➤ Agree with the government that the existing Copyright Act, 1978 (Act No. 98 of 1978) ("the Act"), is outdated and has not been effective in a number of areas ➤ Agree with the government that new legislation should "allow reasonable access to education; ensure that access to 		<ul style="list-style-type: none"> ➤ Comments are noted as the CAB is supported.

		<p>information and resources are available for persons with disabilities; and ensure that artists do not die as paupers due to ineffective protection.”</p> <ul style="list-style-type: none"> ➤ The Bill has already become an international model for progressive ideas ➤ Fair Use is important for creators, educators, researchers, and librarians ➤ Fair Use is compatible with international treaties ➤ Fair use is a key driver of growth of the creative industry, and for economic growth 		
28. IFPI	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Welcome the commitment of the South African Government to modernising South African copyright law to make it a standard for the region and to bring it into line with the WIPO Internet and Beijing treaties and best practice ➤ Support the aim of the Copyright Act Amendment Bill and the Performers’ Protection Amendment Bill of ensuring that South African creators are remunerated fairly for their 	<ul style="list-style-type: none"> ➤ Urge the NCOP to pause to consider the impact that these Bills would have in their present forms, and make changes to the Bills which are essential to avoid these dire consequences 	<ul style="list-style-type: none"> ➤ The Constitutional aspects of the Bills have been checked through the legal process of Parliament as custodians of the Bills, before the Bills were introduced into Parliament ➤ Challenging sections of the Bills with the risk of constitutionality were

		<p>artistic endeavours, the fair remuneration of artists already being of central importance to our sector. However, in their present forms, the Bills will not achieve these aims.</p> <ul style="list-style-type: none"> ➤ The bills before the NCOP risk seriously harming the carefully balanced ecosystem that enables record companies to invest in and partner with artists, working together to drive the success of the South African music industry ➤ There are serious concerns regarding the constitutionality of both bills. 		<p>tightened in the Bill. Section 6A, 7A, 8A were enhanced with a process on retrospectivity that created clarity.</p>
<p>29. Media Monitoring Africa</p>	<p>Object to certain aspects of the Bills</p>	<ul style="list-style-type: none"> ➤ MMA remains concerned that the CAB as a whole does not adequately address the application of copyright in the digital age, in particular to digital media. This is an overarching concern that needs to be addressed holistically in the CAB as it permeates throughout the CAB. ➤ The CAB does not adequately address the issue of jurisdiction and the cross-border nature of publication and copyright enforcement in the digital age. 	<ul style="list-style-type: none"> ➤ There is a need to ensure that the language in the CAB is appropriate for digital media, and is rationalised with other South African legal frameworks that apply to information and communications technologies (ICTs), internet governance and online content ➤ There is a need for better coordination among role-players in order to ensure that the various laws that impact internet governance and online content are enacted and enforced in a consistent and coherent manner. 	<ul style="list-style-type: none"> ➤ South Africa is attending to its developmental needs and objectives as well as creating updated legal frameworks that start taking cognizance of digital aspects which the Act doesn't have at all. In terms of an Act that is 41 years old the Bills take into consideration as many digital issues as possible, business models will evolve faster than the legislation and the

			<ul style="list-style-type: none"> ➤ There is a need for the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty) to be ratified. ➤ There is a need the need for a robust public education and awareness campaign on the implications of the CAB, particularly for children, given the complexities and the ease with which information that is subject to copyright can be shared via social media. 	<p>regulations will provide further clarity.</p> <ul style="list-style-type: none"> ➤ Agree that better coordination of role-players is needed this may be better dealt with outside the legislative process and this is an ongoing process and 4 industrial revolution affects many and the scope is broader than the Bill. ➤ Agree on the importance of the Marrakech Treaty. ➤ All comments noted.
30. INNOVUS	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The draft Bill still proposes to amend Section 22 of the Act to restrict the duration of any assignment of copyright in literary and musical works to 25 (twenty-five) years. The intended result is apparently that the ownership of an assigned literary or musical work would revert to the assignor after this period. Despite repeated warnings by a number of commentators, the drafters of the Bill have persisted with this economically disastrous provision. ➤ The reversion right contemplated in Section 22 	<ul style="list-style-type: none"> ➤ The proposed proviso to Section 22(3) limiting the assignment of copyright in literary and musical works to 25 years must be scrapped. ➤ All retroactive applications of compulsory royalty rights must be removed from the Bill. 	<ul style="list-style-type: none"> ➤ Comments are noted. Reversion clauses are not new to legal frameworks whether in the USA or the UK for different type of works. ➤ The Bill limits the assignment to these works as a result of public comment and address the concerns of assignment as raised by the Copyright Review Commission (CRC).

		<p>creates massive business risk for all South African businesses. For no apparent reason businesses are now faced with the prospect that gaps may suddenly start appearing in its rights to use its business intellectual property and these gaps can expose the business to potentially disastrous legal action</p> <ul style="list-style-type: none">➤ Infringement risk as a result of the time limit on assignments will accordingly lead to the devaluation of effectively all South African businesses as compared to businesses established in other parts of the world.➤ The Bill still proposes inalienable rights to royalties for authors of certain copyright works notwithstanding their transfer of their rights under copyright in respect of such works.➤ Despite strong criticism, the Bill still proposes that these royalties apply to certain types of previously assigned works. Clearly this amounts to interference in existing commercial arrangements which could have very serious		
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		<p>implications on any institution or business.</p> <ul style="list-style-type: none"> ➤ Certain proposed amendments to the Copyright Act remain despite reasoned and repeated comment and criticism. They will inevitably be hugely destructive to the growth of our economy through science, technology and innovation 		
31. South African Guild of Actors (SAGA)	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ SAGA is concerned that the length of time granted for public comments to the Committee regarding CAB is insufficient to allow for the requisite depth in addressing the many issues that the CAB in its current iteration contains. ➤ In general terms, and subject to the amendment of the Performers Protection Act, SAGA welcomes the CAB as it improves performers protection by granting them the right to share in the revenues from the exploitation of their performances fixed in audio-visual fixations. ➤ However, the CAB has some areas which could be improved upon, both on the language and on the substantive provisions. 		<ul style="list-style-type: none"> ➤ The provisions of the BTAP are found in the PPAB. ➤ The PPAB provides moral rights for performers. ➤ Performers have been granted the rights for their audio visual performances as mentioned in the PPAB. ➤ Comments noted but are catered for in the PPAB.

		<ul style="list-style-type: none">➤ The CAB fails to properly implement the provisions of the International Treaties to which South Africa aims to accede, especially the Beijing Treaty on Audio-visual Performances of 2012 (“BTAP”).➤ The CAB should include clear provisions granting performers the moral rights of control and integrity on their live performances and on their performances fixed in audio-visual fixations➤ Performers should also be granted the exclusive right to authorise the fixation and the communication to the public of their live performances➤ Performers should also have control over the reproduction, distribution, rental, making available, broadcasting and communication to the public of their performances fixed in audio-visual fixations➤ SAGA welcomes the addition of a definition for ‘collecting society’. By providing a definition, the mandate of		
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		<p>collecting societies is refined. SAGA feels that the definition must be expanded. This definition must include that each collecting society may only be accredited to manage one category of right holder, having the power to collect all rights granted to such a category of right holder and that no collecting society may have the power or mandate to collect for more than one category of right holder.</p> <ul style="list-style-type: none"> ➤ Section 8A could include a provision that the right to a share on revenues for those types of use may be exercised against the user (the "licensee"), under the conditions set in the Performers Protection Act. ➤ Section 25 inserting of Chapter 1A section 22B – 22F of the Copyright Act 98 of 1978- These proposed regulations are welcome, as they clarify the role of collecting societies. 		
32. Academic and Non-Fiction Authors' Association of	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The dictates of section 6A (1) are disadvantageous to authors because they seek to replace a lump-sum payment with a percentage royalty. 	<ul style="list-style-type: none"> ➤ ANFASA therefore proposes that 'literary' works be excluded from section 6. ➤ ANFASA requests that the CAB be referred back to the DTI to be redrafted. 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The authors have been deprived of the right to their royalties. This provision aims to ensure

<p>South Africa (ANFASA)</p>		<ul style="list-style-type: none"> ➤ Overall, section 6 offers nothing to authors and is a clear indication that the Bill was conceived as benefiting authors of musical works and not drafted with any intention to consider authors of literary works. ➤ ANFASA feels the need to assert that the provisions of the CAB are not developmental ➤ the CAB will not lead to the growth of innovation and creativity envisaged by the minister and nor will the CAB in its current form provide students with better and cheaper access to educational material 		<p>royalties are paid for creative work. In the music industry, provision was made, however not specific and it was abused.</p> <ul style="list-style-type: none"> ➤ The two Bill through 6A affords protection to authors, the clause covers both authors of musical and literary works.
<p>33. Animation South Africa</p>	<p>More time needed to understand the bill and its implication, but at first glance, worried about the adverse effects of the Bills</p>	<ul style="list-style-type: none"> ➤ its current form, Copyright Amendment Bill [B13B-2017] will not satisfy the contractual demands of the international community of content producers. and jeopardizes our competitive advantage. ➤ It will have deleterious consequences for the animation industry. ➤ The CAB is both confusing and widely open to interpretation when applied to animation industry specific needs. 	<ul style="list-style-type: none"> ➤ Would like to recommend that the Select Committee on Trade and International Relations suspend the bills so that there is time to subject them to a wider consultation process, more meaningful scrutiny and a proper impact assessment 	<ul style="list-style-type: none"> ➤ Comments are noted. The Bills have been in the public domain with many opportunities to participate in the public participation process during the different comments periods in the legislative process. Whilst legislation is complex a balance must be struck as some stakeholders require more time, others require issues

		<ul style="list-style-type: none"> ➤ Would like sufficient time to understand the implications of the bills 		<ul style="list-style-type: none"> ➤ to be dealt with more so with outdated legislation. ➤ The submission does not address a specific clause.
34. Black Ginger	Not in agreement with the Bills	<ul style="list-style-type: none"> ➤ The latest drafts of the Copyright Amendment Bill and the Performers' Protection Amendment Bill are problematic ➤ High profile legal teams have expressed concern that the bills, if passed, will not satisfy international treaty compliance. ➤ Large multinational media corporations representing billions of spend in the film sector in South Africa annually, will not be willing to contract with the local industry should the bills be passed into law. 	<ul style="list-style-type: none"> ➤ Would like to respectfully request that you suspend the bills in their current form and recommend that they be carefully redrafted and subjected to a suitable impact assessment process. 	<ul style="list-style-type: none"> ➤ The Constitutional aspects of the Bills have been checked through the legal process of Parliament as custodians of the Bills, before the Bills were introduced into Parliament ➤ Constitutionality was checked by the State Law Advisors. ➤ The Bills are compliant with international treaties and this may be a difference in interpretation.
35. Future Managers	Not in agreement with the Bills	<ul style="list-style-type: none"> ➤ Future Managers has contracted 170 authors all of whom are very concerned about the Bill ➤ Submitted a number of proposed changes to Section 12 of the Amendments 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ Much work and deliberations went into section 12.
36. Library and Information Association of South Africa (LIASA)	Supports the CAB	<ul style="list-style-type: none"> ➤ Notes that digitisation is not defined or specifically mentioned in the Bill, but since digitisation is the form of preservation in the online environment. Believe that 	<ul style="list-style-type: none"> ➤ It would be prudent of the Committee and the DTI to take cognisance of copyright developments in the EU on online issues (especially the controversial Clauses 11 and 13 of their proposals). 	<ul style="list-style-type: none"> ➤ Comments are noted, most provisions were supported. ➤ This is the first major overhaul of the legislation since its promulgation and

		<p>the provisions for preservation in the Bill do include digitisation.</p> <ul style="list-style-type: none"> ➤ Text and data mining is very important for research and other forms of knowledge production, but is not addressed in the Bill despite it being recommended by many stakeholders in submissions and at public hearings in August 2017 ➤ LIASA supports the fair use provisions and limitations and exceptions for libraries, archives, museums and galleries, as well as the provisions for education, research and persons with disabilities. ➤ LIASA believes that the Bill goes a long way in addressing issues around access to information and resource-sharing, as well as preservation of collections for now and for future generations. ➤ LIASA also welcomes the provisions for Collection Societies, as there has been no regulation or accountability before 		<p>therefore digital aspects were covered as widely as possible to allow for digital issues, it is also possible that data and text mining are possible under fair use.</p> <ul style="list-style-type: none"> ➤ Digital aspects mentioned such as data mining etc. are noted-South Africa is attending to its developmental needs and objectives as well as creating updated legal frameworks that start taking cognizance of digital aspects which the Act doesn't have at all.
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		<ul style="list-style-type: none"> ➤ The provisions for Orphan Works are impractical in the Bill. ➤ LIASA accepts that no piece of legislation is perfect and that there are still issues that need to be addressed, such as online contracts, safe harbours, etc., but we believe those can be dealt with in a brief amendment in the future 		
37. N.A. MATZUKIS (Advocate of the High Court of South Africa)	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Clause 5: s6A(4)(b) refers to 'the royalty percentage agreed on, or ordered by the Tribunal, as the case may be'. It should refer, more specifically, to the various royalties that might be attracted by the different rights bundled into Copyright ➤ Section 6A is quite revolutionary in that it provides for ongoing future royalty income for the author, despite outright assignment/copyright transfer of a literary or musical work. While very noble in its intent, the clause might cause some commercial challenges; it might have the effect of discouraging broadcasters and producers from acquiring assignment of such copyrights in future, and rather pursuing lower value 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ Where there is no agreement the matter is referred to the Tribunal and the Tribunal will adjudicate on the various royalties that may be attracted by the different rights. ➤ The authors have been deprived of the right to their royalties. This provision aims to ensure royalties are paid for creative work. In the music industry, provision was made, however not specific and it was abused.

		<p>licensing contracts, where copyright is licensed or transferred temporarily or partially.</p> <ul style="list-style-type: none">➤ Clause 4, which introduces the rights of 'communicating the work to the public' and the 'making available' to the public' is to be welcomed. However, the clause would be more complete if it removed the confusion between interactive and non-interactive streaming (which has caused problems in the US, for example, where Sound Exchange could for years not collect royalties for interactive streaming)➤ No legislation of this type should be retrospective in application. Retrospectivity will potentially affect existing successful business arrangements and would wreak havoc on existing relationships, business models, forecasts and cost structures. It would also expose the legislation to constitutional challenge in accordance with the recognition that statutory retrospectivity generally undermines the Rule of Law		
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		<ul style="list-style-type: none"> ➤ Welcome the criminalization of failure to report music usage which is without doubt, one of the greatest challenges currently facing the music industry ➤ Welcome the regulation of all collecting societies, however, would caution that the Regulations to be promulgated under this empowering legislation, must be drafted carefully. 		
38. International Publishers Association (IPA)	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ When South Africa announced its intention to review and modernize its copyright law, the original purpose was to benefit South African performers and authors who were not receiving fair remuneration for their own intellectual property creations. Unfortunately, the Copyright Amendment Bill strays far afield from this intended purpose ➤ The Bill introduces a broad fair use clause, alongside extended general exceptions and new exceptions for educational institutions, libraries, archives, museums and galleries, thereby weakening the position of South African authors and publishers. It also contains other features 	<ul style="list-style-type: none"> ➤ The IPA and its members urge the Government of South Africa to return to the original intentions and Parliament to heed the advice of the experts it engaged and reject the current Bill. ➤ Meaningful dialogue with the relevant stakeholders should be undertaken so that the legislation better addresses the needs of authors, publishers, and educational communities. 	<ul style="list-style-type: none"> ➤ The Constitutional aspects of the Bills have been checked through the legal process of Parliament as custodians of the Bills, before the Bills were introduced into Parliament ➤ Constitutionality was checked by the State Law Advisors. ➤ The Bills are compliant with international treaties and this may be a difference in interpretation. ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step

		<p>not meeting international best practice.</p> <ul style="list-style-type: none"> ➤ The IPA notes with concern that these new provisions are to large extent not supported by statements of underlying policy or by the kind of impact assessment necessary to gauge the potential harm that will result from the Bill becoming law. ➤ The IPA opposes the introduction of a 'fair use' clause that captures more permitted purposes than the 'fair use' clauses in other jurisdictions, which, coupled with a clause that overrides all contracts, broad co-extensive general exceptions and new exceptions for educational institutions, libraries, archives, museums and galleries, will allow reproduction and making available of entire works without the consent of or remuneration to the rights holder. ➤ Adoption of the Bill in its current form will conflict with South Africa's obligations under the Berne Convention and the Trade-Related Aspects of Intellectual Property Rights Agreement and will also not enable South Africa to accede to the WIPO Copyright Treaty or 		<p>test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an</p>
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		the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.		increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models.
39. Independent Producers Organisation (IPO)	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Commend the efforts to improve Section 21(c). However, the section still does not create a default ownership in the work by its author. The IPO strongly recommends a move to the default retention of rights by a creator or author ➤ The IPO strongly objects to any royalties or remuneration being imposed retrospectively. It is fundamentally unfair to impose legal and financial obligations after the fact and it is possibly also unconstitutional in being an arbitrary deprivation of property. ➤ Limiting rights to literary works (like books) and musical recording to a 25-year period will be a serious disincentive to investors and creators, since the copyrighted material depends on all elements being available and 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ Ownership will be established through the contract, ownership must be negotiated and acceptable to the contractual parties, it can be the Commissioner, the Author or co ownership the contract will be the basis as opposed to the previous default which was ownership resided with the Commissioner.

		<p>bundled together for licensing and resale.</p> <ul style="list-style-type: none"> ➤ The section on unenforceable contractual term creates an unacceptable limitation on freedom of contract and prevents producers from contracting with actors, writers etc to find a deal that works for all the parties. It would turn the right to royalties in into an unwaivable and perpetual right. ➤ Support the provision in Section 15 for the capturing of works in public spaces. This provision will clarify our rights to depict the reality of public spaces as they are, without worry of violating copyright in the many protected images and works that occur in public spaces. ➤ The IPO notes with concern the added exceptions in respect of technological protection measures which are likely to pose a disadvantage on already vulnerable South African rights-holders. 		
40. UCT School of African & Gender	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Concerned that the phrase 'fair use' might be interpreted in ways that undermine scholars' rights 		<ul style="list-style-type: none"> ➤ Comment are noted.

<p>Studies, Anthropology & Linguistics</p>		<p>to be identified with their work, and that this in turn might suggest to the international communities and interlocutors with whom we interact that locally published works are less valuable than internationally published ones because author rights are not well-protected.</p> <ul style="list-style-type: none"> ➤ Also concerned that the opening of access might impact detrimentally on the research subsidy process that currently underpins a key revenue stream in higher education. 		<ul style="list-style-type: none"> ➤ A 4 step test has been included in the provision to provide safeguards.
<p>41. NYCT FILMS</p>	<p>Not in agreement with the Bills</p>	<ul style="list-style-type: none"> ➤ Implores the Committee to reconsider and pause the Copyright and Performers' Protection Amendment Bills ➤ Welcome the commitment of the South African Government to modernizing South African law to make it a standard for the region and to bring it into line with the WIPO Internet and Beijing treaties - as well as with internationally recognized best practices - in pursuance of our shared appreciation for, commitment to and support of, the creative as well as the commercial success of South 		<ul style="list-style-type: none"> ➤ Comments are noted. The Bills have been in the public domain with many opportunities to participate in the public participation process during the different comments periods in the legislative process. Whilst legislation is complex a balance must be struck as some stakeholders require more time, others require issues to be dealt with more so with outdated legislation.

		<p>African creative works, creators and other innovators, artists and artisans.</p> <ul style="list-style-type: none">➤ Support the aim of the Copyright Act Amendment Bill and the Performers' Protection Amendment Bill to ensure that South African creators and innovators are remunerated fairly for their artistic and creative endeavors - the fair remuneration of artists and creators already being of central importance to all of the creative and intellectual property-rich sectors in most areas of the world➤ Regrettably, though, the unintended consequence of a number of proposals in the Bills will be to reduce the incentives for investment in the South African creative industries - to the detriment of the South Africans that the Bills set out to help as well as to the wider South African economy.➤ As they stand currently, the Bills are not wholly compatible with the international treaties to which we understand South Africa intends to accede		
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		<ul style="list-style-type: none">➤ Given the seriousness of this issue and the potential damage that the Bills (if implemented as drafted currently) may inflict to these key industries in South Africa, it is disappointing that only ONE week is allocated for official responses to the Select Committee for Trade and International Relations – followed by a meeting of the Select Committee only a few days after that to consider those written submissions and one further meeting only one week after that to provide the Committee’s responses to those submissions before the vote in the full house.➤ Similarly, neither stakeholders (or, it appears also, several members of the Select Committee) feel that is appropriate that such important legislation should be “rushed through”, especially when there have been already (during earlier phases of its progress, including several that occurred over the last 2 years) so many and varied concerns and requests for improvement offered from creative industry and other stakeholders.		
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		<ul style="list-style-type: none"> ➤ Several sections of the proposed language in the Bills are confusing and vague – raising questions about how they would work if actually implemented 		
42. WikiMedia ZA	Welcomes the Bills	<ul style="list-style-type: none"> ➤ Welcomes the changes to section 15 (1) (a) of the bill. Most specifically subsection ii which adds “the artistic work so used, is situated in a public place. ➤ Supports the adoption of Fair Use in South Africa. This will both help protect freedom of speech and increase clarity on issues of copyright in South Africa. It will also future-proof fundamental aspects of copyright in South Africa so that it can better support technological development and innovation and it will help protect freedom of speech by reducing instances of self-censorship by Wikipedia editors for fear of accidentally violating copyright. It will also harden us against acts of private censorship 		<ul style="list-style-type: none"> ➤ Support for the Bills noted.
43. Associate Professor Sunelle Geyer-Unisa	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Default position regarding the ownership of copyright in commissioned photos, portraits, gravures and audiovisual works is not clear. According to the 		<ul style="list-style-type: none"> ➤ Ownership will be established through the contract, ownership must be negotiated and acceptable to the

		<p>new s 21(1)(c) proposed in clause 22, copyright ownership shall be governed by written agreement between the parties.</p> <ul style="list-style-type: none"> ➤ The proposed s 21(3)(b) addresses situations where “the agreement contemplated in subsection (1)(c) does not specify who the copyright owner is”. Does s 21(3)(b) cover situations where no agreement relating to ownership was reached, or where no written agreement relating to ownership was reached? In other words, what if the parties’ agreement is not in writing? ➤ “Local organization” (see e.g. the proposed new ss 5(2) and 21(2)) is not defined ➤ The proposed new s 22(3), which limits the duration of assignment of copyright in a literary or musical work to 25 years, will not necessarily let the copyright revert to the author. ➤ The proposed new s 29 explains that the Copyright Tribunal will have eight members, but it does not state the number of members that shall comprise a tribunal, e.g. three. 		<p>contractual parties, it can be the Commissioner, the Author or co ownership the contract will be the basis as opposed to the previous default which was ownership resided with the Commissioner.</p> <ul style="list-style-type: none"> ➤ Comments noted on the Tribunal and reversion clause. ➤ The Act prescribes local organization to be provided in the regulations. ➤ The Tribunal members numbers is clear. The Bill provides clarity of the procedures and proceedings of the Tribunal.
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<p>44. UCT Intellectual Property Unit (IPU)</p>	<p>Support the especially CAB the exceptions and limitations</p>	<ul style="list-style-type: none"> ➤ Many – if not most – forms of unauthorised copying that we all wish to prevent are already illegal under our current copyright law, and the real problem here is not the level of protection but the way that existing laws are enforced. ➤ Have seen an expansion of copyright as a result of digital technologies, so the law maker’s intention to now also pay some attention to broadening the scope of user rights – in particular by introducing a flexible and future-proof fair use provision instead of the more limited current fair dealing regime – must be welcomed. ➤ Current Copyright Act came into operation more than 40 years ago. ➤ The question of whether fair use provisions comply with the three-step test is not new to lawmakers and legal experts, and has been discussed many times over. ➤ ‘Three-Step Test’ in Copyright Law, endorsed by dozens of copyright scholars from around the world, advocated a more permissible interpretation of the three-step test and concluded 	<ul style="list-style-type: none"> ➤ Best practice guidelines need to be developed for fair use –as to what is allowed and what is not allowed 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The Companies and Intellectual Property Commission (CIPC) will be responsible for implementation of the CAB and PPAB and the CIPC will develop guidelines and practice notes as required for fair use, which will greatly assist SA in the transition to the hybrid fair use model.
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		<p>that “the Three-Step Test’s restriction of limitations and exceptions to exclusive rights to certain special cases does not prevent legislatures from introducing open ended limitations and exceptions, so long as the scope of such limitations and exceptions is reasonably foreseeable”.</p> <ul style="list-style-type: none"> ➤ While the Copyright Bill in its current form may indeed not expressly address all possible ➤ scenarios and issues brought about by digital technology and the Internet, one should generally be cautious when it comes to referring to state-of-the-art technology in legislation. Instead, the use of technology-neutral language is often preferable as this reduces the need for further amendments should a certain technology be replaced by another. 		
45. Jacaranda FM	Welcomes the Bills and request extension	<ul style="list-style-type: none"> ➤ CAB has far-reaching implications for the media sector ➤ Welcome the opportunity to engage but the concerned is that a Bill of this significance cannot be considered by lay people and therefore, respectfully request an extension of the deadline 		➤ Noted.

<p>46. Dramatic Artistic and Literary Rights Organisation (Pty) Ltd, DALRO</p>	<p>Object to certain aspects of the Bills</p>	<ul style="list-style-type: none"> ➤ DALRO welcomes and supports the need for copyright reform, to improve conditions for authors and performers, and to bring South Africa's copyright into the digital age. ➤ However, having carefully considered the Bill, DALRO can only conclude that it is not ready to be presented to the President for assent and that it should instead be referred back to the National Assembly. ➤ Encouraged by the Cabinet's decision to approve South Africa's accession to the WIPO Copyright Treaty ("WCT"), as well as the WIPO Performances and Phonograms Treaty and the Beijing Treaty on Audiovisual Performances. DALRO supports accession to these Treaties and contends that the Bill must again be reviewed in order to ensure that it is compliant with its requirements, in the light of doubts cast on its compliance by a wide range of stakeholders and experts in copyright law and practice. ➤ Have concerns about the constitutionality of its 	<ul style="list-style-type: none"> ➤ the Bill, as well as the Performers' Protection Amendment Bill, should be sent back to the National Assembly for revision in the light of this latest development, or at least that deliberations on the Bill be suspended until such time the National Assembly has decided on the accession to these Treaties 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The Bills are compliant with international Treaties and this may be a difference in interpretation. ➤ Support for the resale royalty is noted. ➤ This clause protects a vulnerable party who contracted him or herself out of the rights afforded by the Act by allowing that vulnerable party to say – "This is an unenforceable term so I remain protected". However, paragraphs (b) and (c) allows a settlement agreement and a service licence to exclude the protection afforded by the Act. ➤ The authors have been deprived of the right to their royalties. This provision aims to ensure royalties are paid for creative work. In the music industry, provision was made, however not specific and it was abused.
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		<p>retrospective provisions in Sections 6A and 7A</p> <ul style="list-style-type: none"> ➤ Support copyright as a means to enable rightsholders, including authors, to negotiate with their rights to copyright works, and DALRO support freedom to contract. It therefore object to Government-imposed contractual terms and royalty rates, as are intended to be introduced by the new Sections 6A, 7A, 39(cG) and (cl), and the declaration as unenforceable of any contractual terms between willing parties by new Section 39B. ➤ DALRO and visual artists support the introduction of the Resale Royalty Right in the Bill, it being a legitimate form of entitlement, supported by Article 14ter of the Berne Convention, that will bring benefits to living artists and the heirs of deceased artists. ➤ There are, however, material and fundamental omissions in the Resale Royalty Right provisions in the Bill that need to be corrected, 		
47. ETV	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ e.tv wishes to note the short time frame provided to stakeholders 	<ul style="list-style-type: none"> ➤ recommend that further research and a full impact assessment is needed to 	<ul style="list-style-type: none"> ➤ Comments are noted.

		<p>to submit written submissions on both the Copyright Bill and Performers' Bill. Etv does not believe that this time frame was adequate to allow all stakeholders the opportunity to voice their significant and far reaching concerns on the two Bills under consideration</p> <ul style="list-style-type: none"> ➤ e.tv acknowledges the need to update South Africa's intellectual property laws. However, e.tv respectfully submit that in its view there are significant problems with the current draft of the Copyright Bill which will negatively impact on the long-term viability and sustainability of the broadcasting sector in general ➤ E.tv supports the objects of the Copyright Bill and recognises the objects of the Bill. However, E.tv respectfully submits that the Bill in its current form has material defects which cannot be corrected by mere drafting changes. These defects relate to, inter alia: the arguably unconstitutional provisions to be included as section 6A, 7A and 8A of the Bill which provide for retrospective royalty payments; vague and uncertain provisions concerning ownership of 	<p>ascertain the need for retrospective provisions and the impact of such provisions if enacted.</p>	<ul style="list-style-type: none"> ➤ the dti will embark on a process regarding the retrospective provisions. ➤ The limitation of assignment is only applicable to literary and musical works and not all works. Assignments have been limited due to the fact that 25yrs is a sufficient period to not only recoup the investment made but to make profit. Policy positions underpinning the amendment to the legislation as early as 2009.
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		<p>commissioned works; limitations on copyright; and wide reaching powers given to the Minister to prescribe contractual terms and royalty rates.</p> <ul style="list-style-type: none">➤ e.tv respectfully submits that these provisions cannot be corrected through drafting and require complete revaluation and re-conceptualization by the Department of Trade and Industry.➤ It is clear that the retrospective provisions in the Copyright Bill would interfere upon the rights currently held by owners of literary, musical, artistic and audio-visual works.➤ the departure from the ordinary rules of contract in circumstances where there is no underlying impact assessment or policy, is of grave concern. If passed, the retrospective royalty provisions would have a detrimental impact on the film and television industry in South Africa. These provisions will limit the ability of copyright owners to deal with their works. This will impact all contracts, no matter the fairness of its terms.➤ legislation needs to be clear and unambiguous. The current draft is problematic as it creates		
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		<p>uncertainty in respect of which activities the commissioner is the owner. It may also result in disputes between the commissioner and author in absence of any prior agreement</p> <ul style="list-style-type: none">➤ Clause 23(b) is very concerning to e.tv. It attempts to introduce into section 22(3) of the Act, a 25-year limitation on all assignments of all rights of copyright.➤ e.tv notes with concern that there is no policy statement underlying this change.➤ These amendments, coupled with the retrospectivity provisions in 6A, would have a devastating impact on e.tv's current business and the whole film and television industry.➤ E.tv supports the objects of the Performers' Bill. It submits that whilst there are overlapping areas in both Bills, the Performers' Bill may still be considered, processed and finalised independently from the Copyright Bill.➤ However, in recommending that the Performers' Bill be prioritised over the Copyright Bill, there still some are key amendments and proposed re-drafting of clauses		
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		1, 3A, 4 and 6 that need to be considered.		
48. EIFL (Electronic Information for Libraries)	Supports the Bill	<ul style="list-style-type: none"> ➤ EIFL wishes to express its strong support for the Bill and urges the National Council of Provinces to support its timely adoption. ➤ Section 19D is a welcome provision for libraries that serve people with disabilities. It facilitates the right to read for people with disabilities by enabling a copy of a work to be made in an accessible format such as braille, audio, large print and digital accessible formats. 		<ul style="list-style-type: none"> ➤ Support for the Bill noted.
49. American University Washington College of Law	Notes the Bills	<ul style="list-style-type: none"> ➤ Fair use promotes human rights ➤ The openness of fair use enables innovation ➤ Fair use serves creators ➤ Fair use benefits the economy ➤ Fair use will benefit local publishers ➤ Fair use will benefit students ➤ However, fair use is not free-for-all ➤ Fair use does not shift the burden of proof to the rights holder ➤ Fair use does not drive up litigation or litigation costs ➤ Fair use will not cause unpredictability 		<ul style="list-style-type: none"> ➤ Comments on Fair Use are noted.

<p>50. The International Federation of Film Producers Associations</p>	<p>Object to certain aspects of the Bills</p>	<ul style="list-style-type: none"> ➤ Concerned that the short amount of time granted for public comments to the Committee regarding CAB is insufficient to allow for the requisite depth in addressing the many salient problematic issues that the bill as drafted presents from the perspective of the creative industries at large and the audiovisual industry in particular. ➤ Fully support the call of allied copyright industries organisations in South Africa for the bill to be substantially re-drafted and for differentiated impact assessments to be conducted on each creative sector, in order to avoid the unintended negative consequences that the bill in its current form would wreak on South Africa's vulnerable creative sectors and its audiovisual sector in particular ➤ There are a number of unresolved issues regarding legal consistency between the Copyright Amendment Bill and the Performers Protection Amendment Bill (PPAB). ➤ As a matter of both principle and policy, FIAPF supports the objective of ensuring that all 	<ul style="list-style-type: none"> ➤ Call on the Committee to give this hugely important bill additional time for scrutiny and examination 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The limitation on the assignment is important and with respect to the reversion of the copyright these are not new provisions as other jurisdictions apply in a similar way. UK, Spain and Canada. Our model is based on the US and supported by the CRC which allows a limitation on the transfer (assignment) of rights. In the US an author may choose to terminate the transfer after 35 years. The period is sufficient for assignee to recoup commercial investment. ➤ Policy positions are allowed to be extended where applicable and necessary. ➤ Parallel Importation is important for a developing country like South Africa it will introduce innovation and creativity for the local market. Parallel Importation is allowed in terms of international law. TRIPS allows parallel
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		<p>creative contributors to a film should be fairly remunerated.</p> <ul style="list-style-type: none"> ➤ Twenty five year term limit on any assignments of copyright (22(b)(3))- This clause appears to have been unnecessarily amplified from the original policy intention, which was specifically to grant music composers a 'right of reversion'. Whilst the bill limits the application of this clause to literary and musical works, the negative impact of such limitation in assignments will still be felt in copyright transactions in the audiovisual sector ➤ Legitimation of parallel importation and introduction of international exhaustion 'rights' (14(6))- the organisation is at a loss to comprehend what motivated the drafters to include such a clause. If implemented, it would mean that South African film production and distribution companies would have no legal security in protecting the rights to their films when licensing those to foreign distributors or to protect their markets from re-imported versions of their own films ➤ Concerned that the extensive powers granted a government 		<p>importation as well as the regime of exhaustion of rights which includes international exhaustion of rights.</p>
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		minister will encourage regulatory overreach in complex creative sectors, each of which are governed by different economic parameters and business models.		
51. East Coast Radio	Welcomes the Bills and request extension	<ul style="list-style-type: none"> ➤ CAB has far-reaching implications for the media sector ➤ Welcome the opportunity to engage but the concerned is that a Bill of this significance cannot be considered by lay people and therefore, respectfully request an extension of the deadline 		<ul style="list-style-type: none"> ➤ Noted.
52. HSRC Press	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Find the following specific issues in the Bill are of critical concern: <ul style="list-style-type: none"> - Expanding current “fair-dealing” exceptions and limitations to overly broad “fair use” exceptions with no clear legal precedents to deal with contestations. - A lack of research on and no impact assessment regarding scholarly publications. - The unwaivable claim to a royalty by authors, including non-South African authors, even after assignment of copyright. This means that the practice of assignment of copyright for no 		<ul style="list-style-type: none"> ➤ The Bills are compliant with international Treaties and this may be a difference in interpretation. ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. The

		<p>remuneration (zero based royalty in a not for profit costing and pricing situation) in the context of scholarly publishing has not been considered and the existence of scholarly press publishing in South Africa will be under threat.</p> <ul style="list-style-type: none"> - The strong possibility according to legal advice that the new overly broad “fair use” exceptions do not comply with the Berne Convention’s Three-Step Test. - Permission in 12B(7) for authors (and librarians supposedly acting on their behalf) to place the published versions of record of journal articles where there has been at least 50% state funding in repositories for public access, with no preemptory embargo, contradicting most existing Open Access agreements, and also applied retrospectively with no limitation. - 12D(1) and (2) allowing educational institutions to make copies with no 		<p>exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models.</p>
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		<p>deliberation around existing licensing arrangements.</p> <ul style="list-style-type: none"> - 12D(6) allowing portions of works to be used in theses and scholarly outputs and legitimising plagiarism. As proposed in the Bill, the source of the work reproduced and the name of the author shall be indicated 'as far as is practicable', which in effect would make it optional to cite the author's name, creating the possibility of denying author recognition and possibly leading to plagiarism. It is not clear who would determine what is 'practicable'. - A 25-year limit on assignments of copyright in amended 22(3). The proposed limit of 25 years on copyright (Section 22 (3), as amended by Clause 23(b) is problematic for authors as well as publishers. In the lucky event those 25 years after publication a scholarly book is still in demand, the royalties to the author would then cease. 		<ul style="list-style-type: none"> ➤ This clause protects a vulnerable party who contracted him or herself out of the rights afforded by the Act by allowing that vulnerable party to say – "This is an unenforceable term so I remain protected". However, paragraphs (b) and (c) allows a settlement agreement and a service licence to exclude the protection afforded by the Act.
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		<ul style="list-style-type: none"> - A blanket clause (39B) overriding contractual terms that “purport to prevent or restrict the doing of any act which by virtue of this Act would not infringe copyright”, subjecting all existing and future contracts to the new Act. 		
53. International Affiliation of Writers Guilds (IAWG)	Message of Support	<ul style="list-style-type: none"> ➤ Supports Writers’ Guild of South Africa in their fight to protect South African screenwriters rightful compensation and the acknowledgment of their copyright and intellectual property rights. 		<ul style="list-style-type: none"> ➤ Noted. Responses under the WGSA are therefore applicable here.
54. INDEPENDENT BLACK FILMMAKERS COLLECTIVE	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The reform of the Copyright Act No 98 of 1978 (“principle Act”) is greatly welcomed by the IBFC for the continued development and transformation of the industry. ➤ Greatly concerned that the original Bill was not submitted by the DTI for an interdependent regulatory impact assessment before introduction to the National Assembly ➤ The Bill is likely to impose significant negative consequences on the South African creative industry. 	<ul style="list-style-type: none"> ➤ It is accordingly proposed by the IBFC that the amendment to section 5(2) in the draft Bill be refined, the wording amended, and any ambiguity removed. 	<ul style="list-style-type: none"> ➤ Impact assessments were conducted on both Bills as well as policy positions underpinning the amendment to the legislation as early as 2009. ➤ Comments are noted.

		<ul style="list-style-type: none"> ➤ The Bill in its current state, neglects to incorporate changes to address the key issues which have been raised over a long period by the various groups. This is unacceptable and necessitates a more thorough review of the amendment. ➤ The IBFC strongly objects to any royalties or remuneration being imposed retrospectively. It is fundamentally unfair to impose legal and financial obligations after the fact and it is possibly also unconstitutional in being an arbitrary deprivation of property. ➤ 		
55. International Federation of Library Associations and Institutions (IFLA)	Welcomes the Bills	<ul style="list-style-type: none"> ➤ Submits that fair use will not destroy the existing industries (and will make other industries flourish), that exceptions and limitations to copyright for libraries will not destroy the publishing industry (but will help libraries provide a public interest service which will contribute to the health of the overall book sector), and that the current reform is not incompatible with international treaties. ➤ In short, fair use has to be fair, and decisions against 'unfair' uses in courts around the world 		<ul style="list-style-type: none"> ➤ Support for the CAB and exceptions and limitations are noted.

		<p>have shown this concept to be fully operational</p> <ul style="list-style-type: none"> ➤ Retaining outdated laws will not favour the domestic publishing industry over imports from major multinationals, given that copyright law does not allow for this differentiated treatment. 		
<p>56. International Federation of Reproduction Rights Organisations (IFRRO)</p>	<p>Object to certain aspects of the Bills</p>	<ul style="list-style-type: none"> ➤ Disappointed to see that the concerns raised by right holders in SA, other African countries and across the world, have not been addressed by the National Assembly ➤ IFRRO is not in favour of introducing a fair use copyright exception ➤ The CAB, as it stands, would partly conflict with provisions in WIPO treaty ➤ The Bill will place SA in breach of its international obligations ➤ Fair use, fair dealing, exceptions to copyright are complex issues and legislation should not be rushed through ➤ Requests more time for comment 		<ul style="list-style-type: none"> ➤ Comments noted on the objection to the CAB. ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of

				international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models.
57. International Publishers Association (IPA)	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ There has been no material change in the B-Bill in response to most of the substantive points we raised in July 2017, including South Africa’s commitment to accede to the WIPO Copyright Treaty (WCT) and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print 		<ul style="list-style-type: none"> ➤ Comments have been noted. ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the

		<p>Disabled (Marrakesh Treaty) which we considered would be helpful to you from an international perspective.</p> <ul style="list-style-type: none"> ➤ This lack of changes in the B-Bill is particularly disappointing with regard to our cautions against provisions like 'fair use' and overbroad exceptions which, even if ostensibly introduced to support the public good of education and libraries, will in fact help shatter the value chain of copyright and undermine entire markets for copyright works ➤ Having looked at the B-Bill, IPA considers that it is not ready for introduction to the National Assembly, nor will responses to the limited consultation improve that situation 		<p>exceptions and limitations were found to be consistent with the three step test and other legal instruments. The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong</p>
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				Kong, and Kenya are currently amending their legislation to fair use models.
58. Kagiso Media	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ A number of issues and concerns remain in the Bill which, if not addressed and rectified, could have dire consequences on South African copyright law, the rights of creators and owners of original works and ultimately, the creative economy of South Africa. ➤ Given the complexity of this legislation Kagiso Media strongly believe that 5-working days is not nearly enough time to meaningfully create the opportunity for public input. By allowing insufficient time for stakeholders to review and prepare commentary on the Bill the Select Committee is not only carelessly disregarding the detrimental impact that the Bill in its current form will have on the various creative industries in South Africa, but is also now calling into question the validity of the legislative process associated with the Bill. 	➤	<ul style="list-style-type: none"> ➤ Comments have been noted. ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South

		<ul style="list-style-type: none"> ➤ The fact that there is no publicly available socio-economic impact study (SEIAS) is gravely concerning, and Kagiso Media call on the chairperson of the NCOP to send the bill back to the National Assembly to follow due and proper processes. ➤ Section 12A- “Fair use” and copyright protection exception provisions in the Bill will lead to a substantial loss of income to authors, book publishers and entire publishing value-chain ➤ The newly introduced Sections 6A and 7A emanate from the misconception that all works protected by copyright are single-author works, and that their conceptualisation does not cater for multi-author works or even works that contain a multiplicity of copyright works. Surely this provision does not consider the practical realities of the publishing industry ➤ Kagiso is concerned about the constitutionality of its retrospective provisions in Sections 6A and 7A, in respect of which we understand that the 		<p>Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models.</p> <ul style="list-style-type: none"> ➤ The authors have been deprived of the right to their royalties. This provision aims to ensure royalties are paid for creative work. In the music industry, provision was made, however not specific and it was abused. ➤ The Bill acknowledges co authorship
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		<p>Bill is likely not to pass Constitutional muster</p> <ul style="list-style-type: none"> ➤ Kagiso supports copyright as a means to enable rightsholders, including authors, to negotiate with their rights to copyright works, and it supports freedom to contract. Kagiso objects to Government-imposed contractual terms and royalty rates, as are intended to be 		
59. FRIEDA WADE	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ It would be unethical to pass the CAB if it means that authors would lose copyright rights and that it would be legal for textbooks to be copied without compensation ➤ The Committee decision will have massive consequences for all authors, publishers and support staff. However, the learners could be the biggest losers ➤ Don't rush the process. ➤ Reconsider. Wait at least until a thorough, objective, independent socio-economic impact study is done. ➤ Do not to pass the Bill. 		<ul style="list-style-type: none"> ➤ Comments noted, there are safeguards in place in the form of a 4 step test, learners are currently severely disadvantaged. The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries.
60. Panavision	Notes the Bill and Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Concerned about the proposed amendments to Copyright Act of 1978. 		<ul style="list-style-type: none"> ➤ Comments noted.

		<ul style="list-style-type: none"> ➤ Concerned about the very limited time afforded for general public participation and feedback relating to the proposed amendments. ➤ Request the Select Committee to afford more adequate time for amendments. 		
61. Motion Pictures Association (MPA)	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Welcome South Africa's ambition to modernize its copyright (CAB) and performers' protection laws (PPAB) and, in particular, to bring these laws into line with the WIPO Internet and Beijing treaties. ➤ Regrettably, however, the proposals as currently drafted will reduce the incentives for investment in the South African creative industries - to the detriment of South Africa's creative sector and the wider economy. ➤ There is a simple answer to this situation – to suspend the progress of the Bills to allow for them to be redrafted by a qualified team of experts, classified accurately (as a Section 76 bill) and subjected to the proper impact assessment process (including treaty 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The Bills are compliant with international treaties and this may be a difference in interpretation.

		<p>compliance) before being considered again formally for signature and implementation.</p> <ul style="list-style-type: none">➤ As drafted, the proposals will weaken copyright in South Africa. That will make it less attractive for both local and international producers to invest in local production and global distribution of high-end films and TV series. They will also put South African creators, performers and innovators at a disadvantage when compared to their counterparts in other places where the regulatory frameworks protect individual artists, creators and companies as well as the business of the sectors.➤ The Bills are not compatible with the WIPO internet treaties to which South Africa intends to accede. Michelle Woods, Director of WIPO's Copyright Law Division, reportedly raised many treaty violation concerns with the Technical Panel of Experts.➤ One core concern is that many of the provisions in the Copyright Amendment Bill simply do not implement the minimum		
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		<p>standard of protection required by treaty obligations.</p> <ul style="list-style-type: none"> ➤ There are serious questions about legal certainty, practicality, constitutionality and international treaty compliance. The Bills as proposed currently have not been subject to the requisite formal impact assessments, which raises the probability of harm. ➤ MPA supports suspending the progress of the Bills, to draft them again, classify them accurately (as a Section 76 bill) and subject the bills to the proper impact assessment process (including treaty compliance) before considering them again formally for signature and implementation. 		
62. Denise Nicholson	R. Welcomes the Bill and Highlight gaps in certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Commend the DTI and the Portfolio Committee on Trade and Industry, and now the Select Committee of the National Council of Provinces for affording all stakeholders such a lengthy and wide consultation process, with meetings, workshops, a large conference in 2015, and many calls for submissions on the Bill. ➤ All stakeholders have been given ample time and 		<ul style="list-style-type: none"> ➤ Comments are noted and support for the Bill. ➤ It is aimed that the Intellectual Property Laws Amendment Act 2013 will be operationalised.

		<p>opportunities to engage and submit comments during the course of the past 3 ½ years, and present at public hearings in Parliament in August 2017</p> <ul style="list-style-type: none">➤ The Bill brings SA copyright law in line with international treaties and trends. It is not in conflict with the Berne 3-Step Test, as is claimed by some stakeholders. It also includes many of the provisions that South Africa (DIRCO) is strongly supporting at WIPO, e.g. Treaty proposals from the Africa Group, as well as those from the International Federation of Library Associations and Institutions (IFLA) and their alliance partners, as well as the EIFL model copyright law (which is an expansion of the WIPO Model Copyright law for developing countries) and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled➤ Support the Bill, but in particular, the fair use provisions and exceptions for libraries, archives, museums and galleries; for education and research; for people with disabilities, etc. Although the Bill		
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		<p>has a rather cumbersome process for orphan works, we hope that fair use will apply in some circumstances.</p> <ul style="list-style-type: none">➤ Fair use provisions are welcomed in the Bill as they modernise the law and enable use of copyright materials in an ever-changing world where new technologies appear every so often. It paves the way for the Fourth Industrial Revolution, which will open up possibilities never experienced before.➤ Fair dealing in our current Copyright Act does not address digital issues at all, and essentially only applies to a limited number of acts and essentially, photocopying.➤ Some stakeholders claim that fair use will lead to costly litigation. This is not necessarily going to happen, as there are many Best Practice Guidelines on Fair Use for creators and users of information, which should help to avoid any litigation➤ Through this Bill, our copyright law takes a quantum leap into the 21st century and the digital world, and anticipates changes that will come with the fast advancing Fourth Industrial		
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		<p>Revolution. The fair use is future-proof, so as technologies change, it will accommodate them, so that the law does not have to be amended every time new technologies appear</p> <ul style="list-style-type: none"> ➤ The Bill makes reference to two pieces of legislation which have not yet been proclaimed, namely, the Copyright Amendment Act 66 of 1983 and Intellectual Property Laws Amendment Act 28 of 2013 (DTI) 		
<p>63. Caroline Ncube (DST/NRF SARChI Chair: Intellectual Property, Innovation and Development)</p>	<p>Welcomes the Bill</p>	<ul style="list-style-type: none"> ➤ Copyright law reform debates therefore need to take the innovation and socio-economic context, the imperative of the protection of the rights of authors and other stakeholder interests into account. An equitable approach to this consideration would include reliance on sound evidence; a consideration of constitutional rights (e.g. the right to education) and the public interest. These considerations are not easily weighed and debates tend to get heated. ➤ At such times there is a rise in the use of political rhetoric, and in regrettable instances, the personification of arguments that vilify other participants in the 	<ul style="list-style-type: none"> ➤ Enact equitable provisions that adequately protect right holders' rights, facilitate enforcement and enable access and creativity in the digital age. ➤ The Copyright Amendment Bill introduces copyright-specific ant circumvention provisions that are accompanied by exceptions and limitations (new sections 28O and 28P). ➤ The Copyright Amendment Bill does not have to contain safe harbor provisions as these are already in the ECTA, albeit requiring some revision. 	<ul style="list-style-type: none"> ➤ Comments are noted on the safe harbor provisions.

		<p>debate. The Committee is urged to make every effort to cut through such heated debates so that a truly principled consideration of the legal and public interest aspects can be conducted</p> <ul style="list-style-type: none"> ➤ Section 86 may be used for the prosecution of persons who circumvent technological protection mechanisms but it was not crafted specifically for copyright and the main shortcoming of this provision is that it does not incorporate existing copyright exceptions and limitations which upsets the balance that has already been achieved. ➤ Sections 77 - 79 of the ECTA contain safe harbour provisions which limit the liability of intermediaries, such as Internet Service Providers, for copyright infringement in certain specific instances. 		
64. Publishers Association of South Africa (PASA)	Welcomes the Bill and Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ PASA welcomes and supports the need for copyright reform, to improve conditions for authors and performers, and to bring South Africa's copyright into the digital age. ➤ PASA is encouraged by the Cabinet's decision to approve 		<ul style="list-style-type: none"> ➤ Comments noted. ➤ Issues raised have been addressed above.

		<p>South Africa's accession to the WIPO Copyright Treaty ("WCT"), as well as the WIPO Performances and Phonograms Treaty and the Beijing Treaty on Audiovisual Performances.</p> <ul style="list-style-type: none">➤ PASA supports accession to these Treaties and contends that the Bill must again be reviewed in order to ensure that it is compliant with its requirements, in the light of doubts cast on its compliance by a wide range of stakeholders and experts in copyright law and practice.➤ PASA therefore ask that the Bill, as well as the Performers' Protection Amendment Bill, be sent back to the National Assembly for revision in the light of this latest development, or at least that deliberations on the Bill be suspended until such time until the National Assembly has decided on the accession to these Treaties.➤ PASA supports the policy objective that the Bill is meant to be supportive of authors, the creators of literary works. The Bill will, however, not be able to achieve this outcome for authors in the literary industry, especially where works made for use in		
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		<p>educational institutions are concerned</p> <ul style="list-style-type: none"> ➤ PASA has concerns about the constitutionality of its retrospective provisions in Sections 6A and 7A, in respect of which we understand that advocates who specialise in constitutional law have already advised that they may be unconstitutional. 		
65. Petition with 403 signatories	Call to suspend the Copyright Amendment Bill and the Performers' Protection Bill	<ul style="list-style-type: none"> ➤ The bill as it stands will have a number of unintended consequences that will effectively reduce foreign investment. ➤ This could be disastrous for the creative economy and significantly reduce employment opportunities for the very artists the bill aims to protect. ➤ Appeal to the National Council of Provinces Select Committee to make a recommendation to suspend the bill in order to redraft it and subject it to a proper impact assessment process. 		<ul style="list-style-type: none"> ➤ Noted.
66. Right2Know Campaign (R2K)	Welcomes the Bill	<ul style="list-style-type: none"> ➤ Support the proposal to add a public interest exception to copyright that would permit all "fair use" of a copyrighted work. This provision will clarify that 	<ul style="list-style-type: none"> ➤ 	<ul style="list-style-type: none"> ➤ Comments on the support for the Bill and exceptions and limitations noted.

		<p>organisations like R2K can go about their work free from potential private censorship by copyright holders.</p> <ul style="list-style-type: none"> ➤ The current Copyright Act is unduly complex and lacks a general public interest exception ➤ The proposed fair use provision will help R2K by making clear our public interest rights. Now R2K will know that it can use any work, by any user, for any purpose as long as its use is fair. R2K find the test for a fair use to be clear. ➤ R2K also support the additional clarifications in the specific exceptions in the Copyright Amendment Bill. R2K particularly support the broadening of the right to incidental use of copyrighted works and for the use of works in public spaces. 		
67. Ground Glass	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Have concerns with the document as it exists, with regard to the manner in which it is structured, vague terminology, inadequate research, a seeming lack of a detailed and well researched impact assessment ➤ There needs to be detailed differentiation between the various sectors that make up the 	<ul style="list-style-type: none"> ➤ Strongly recommend that the amendment be suspended until the Minister and Deputy-Minister of Arts and Culture have met with various associations and industry leaders from the commercials service and local sector, a key organisation being the Commercial Producers Association of South Africa (CPASA). 	<ul style="list-style-type: none"> ➤ Comments noted.

		<p>film industry in South Africa – within the film and television arena alone we have more than 10 individual production frameworks, all working differently and to different guidelines.</p> <ul style="list-style-type: none"> ➤ It is a concern that general rules and regulations applied to these sectors could have a serious impact for our future and ideally should be fully realized and calibrated to suite each sector to their benefit and not their detriment. 		
68. South African Copyright Alliance (SACA)	Welcomes the Bill	<ul style="list-style-type: none"> ➤ it is crucial that sector specific approaches and applications of the suggested amendments are considered in order to ensure that no sector suffers unintended consequences ➤ SACA would like to extend an invitation to the Select Committee to a workshop aimed at showcasing the practical management and application of copyright and copyright laws on a day to day basis. ➤ SACA believe that such a workshop shall aid in contextualising the written submissions made by members and the sector specific nuances in each. This practical 		<ul style="list-style-type: none"> ➤ Comments noted.

		understanding will assist the overall process and ensure that the final draft of the Bill caters for and protects, first and foremost, the vulnerable creators of copyright protected material.		
69. International Confederation of Societies of Authors and Composer (CISAC)	Welcomes the Bill Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ CISAC notes that many of the proposed amendments reflect a distinctly positive endeavour by the Parliament to implement a more effective, efficient and adaptable copyright system. ➤ In particular, CISAC welcomes the introduction of the resale right as well as the provisions protecting creators' rights in the digital environment. ➤ Concerning the resale right, CISAC looks forward to review the rates that will be proposed by the Ministry as stated in the article 7B (2) b) and we do hope a prior public consultation will enable us to give our views on the proposed rates before any official publication. ➤ However, CISAC is writing wants to express concerns with some of the provisions that are out of step with international law and practice. If unchanged, these provisions would have a deeply detrimental impact on creators by jeopardising their 		<ul style="list-style-type: none"> ➤ Note the comments and support for the resale royalty. ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are several countries in the world with open broad exceptions and have not been found to be in contravention of

		<p>ability to continue making a living from their creative works and would also reduce the incentives to invest in South African creative industries to the detriment of all right holders and the wider South African economy:</p> <ul style="list-style-type: none"> - Provision that introduce an open fair use exception shall be removed as a matter of priority since it will deprive creators from their rights and remuneration (Section 12A (a)) - Provisions that fix the term of validity of the copyright assignment should not apply in respect of assignments between rights holders and accredited collective societies that permit the reversion of copyright to rights holders at the termination of membership (Section 21(b)). - Provisions that attribute to the “State, international or local organisations” the ownership of works made by or under the direction or control of such entities should be limited to a closed list of specific category of works. Furthermore, the 		<p>international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models.</p>
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		<p>inclusion of any “local organisation” would have a very dire effect on the livelihoods of rights holders and should be deleted (Section 5(2)).</p> <ul style="list-style-type: none"> - The role of various parties in the copyright value chain should be conveniently rectified in order to exclude some categories from being entitled to sharing on a royalty (Section 8). - Provision enabling the distribution of royalties by a CMO to sister societies shall be enlarge to all type of representation agreements (Article 22 C (3) c). - CISAC encourages the introduction of a private copying levy to ensure that copyright holders are duly compensated for acts of copying that are done by individual persons and for private use. 		
70. Nambitha Mpumlwana	Support PPAB	<ul style="list-style-type: none"> ➤ Need NCOP to pass the Performers Protection Amendment Bill ➤ Support the intentions and potential outcomes of the Bill ➤ Not paying performers their royalties is seriously 	<ul style="list-style-type: none"> ➤ Recommends the payment of royalties and syndication fees for episodes of local productions that are broadcast in various countries worldwide ➤ The law needs to be retrospective by at least 10 to 20 years 	<ul style="list-style-type: none"> ➤ Comments are noted and support for the PPAB. ➤ Remuneration issues provided for in the Bill. ➤ Contracts can address other arrangements. Labour related issues are

		undermining their earning potential as artists	<ul style="list-style-type: none"> ➤ Residuals should come through structured compensation. ➤ Production Houses and SABC to review the payment rates, rationalize and bring them in line with international standards and norms ➤ The Bill needs to include the language of the contracts performers sign as artists 	addressed in Labour legislation.
71. Florence Masebe	Supports the Bill	<ul style="list-style-type: none"> ➤ The Bill should be passed to change the environment of artists and performers and make things better 		<ul style="list-style-type: none"> ➤ Support for the PPAB is noted.
72. Warner Bros Pictures	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ Have concerns regarding a number of provisions of the Bills ➤ Believe the currently proposed legislation will not only put local South African artists at a disadvantage but will prove to be a disincentive to foreign direct investment in SA ➤ Urges the Committee to open the process so that all affected parties have an opportunity to provide input and to assist the development and actual delivery of a system that will serve local artists, creators and innovators and that will continue to attract lucrative foreign direct investment to SA 	<ul style="list-style-type: none"> ➤ 	<ul style="list-style-type: none"> ➤ Comments are noted.

<p>73. ADVOCATE STEVEN BUDLENDER AND ADVOCATE INGRID CLOETE</p>	<p>Object to certain aspects of the Bills</p>	<ul style="list-style-type: none"> ➤ The Bill has been incorrectly tagged as a section 75 bill ➤ Sections 6A(7), 7A(7) and 8A(5) constitute retrospective and arbitrary deprivation of property; ➤ Sections 6A(7)(b), 7A(7)(b) and 8A(5)(b) impermissibly delegate legislative authority to the Minister; ➤ There has been inadequate public consultation on section 12A – the new fair use exception; ➤ The new exceptions constitute arbitrary deprivation of property; and ➤ The new exceptions violate the right to freedom of trade, occupation and profession. 		<ul style="list-style-type: none"> ➤ Comments are noted. ➤ Comments are noted. ➤ Legal advice obtained on Exceptions and Limitations - The Constitutional aspects of the Bills have been checked through the legal process of Parliament as custodians of the Bills, before the Bills were introduced into Parliament. Constitutionality was checked by the State Law Advisors. ➤ the dti and the PC of Trade and Industry as well as the Parliamentary Legal Office did indeed consider the three step test in terms of the Berne Convention, legal advice was presented on this matter and all the exceptions and limitations were found to be consistent with the three step test and other legal instruments. The exceptions and limitations are welcomed by many and are included in the Bill to allow for the developmental objectives of South Africa. There are
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				<p>several countries in the world with open broad exceptions and have not been found to be in contravention of international law such as the US, Singapore, Malaysia, Israel, South Korea, Sri Lanka and Canada etc.- The Bill contains a modern general exception in order to create an environment conducive to the development of creative works and also to facilitate greater investment, research and development in copyright industries. There is an increasing trend for countries to move towards fair use into their copyright regimes. Australia, Hong Kong, and Kenya are currently amending their legislation to fair use models</p>
74. South African Book Development Council	Object to certain aspects of the Bills	<ul style="list-style-type: none"> ➤ The Copyright Amendment Bill is the wrong legal instrument to redress access to writing and books in South Africa. ➤ The Copyright Amendment Bill will not, through its application, 		<ul style="list-style-type: none"> ➤ Comments are noted. Copyright exceptions are critical to creating access to learning materials for educational purposes. The Bill recognizes that

		<p>be able to distinguish between foreign-owned works, and locally owned and produced works. It will not distinguish between an imported work, versus a work produced by a black author or publisher in South Africa. The emerging, indigenous language author will be exposed to the same measures of the Bill as the well-established, highly successful Western author.</p> <ul style="list-style-type: none"> ➤ The four factors for Fair use – being 12A. (b). i-iv) indeed allows for the protection of copyright owners. However, this protection is eroded when read with Section 12A to 12D, as it will not prevent anyone from using copyrighted materials without remunerating rightsholders. Including education in the general exceptions for Fair Use is a challenge. It's important that this clause be read with Section 12 A-D. 		<p>there will be importing of materials such as books. The contractual arrangements will distinguish the different terms between parties and the uniqueness of authors. The language in the Bill is aligned to the principal Act and may not be too specific to categories of authors. The issues of indigenous knowledge are provide for in the Bill.</p>
<p>75. Eve Gray and Desmond Oriakhogba</p>	<ul style="list-style-type: none"> ➤ Support the educational use provisions of the CAB. 	<ul style="list-style-type: none"> ➤ We are aware that the international publishing industry is arguing that the Amendment Bill will be the end of local publishing. These arguments are alarmist and wrong-headed. The Bill will HELP local authors and publishers while helping to 	<ul style="list-style-type: none"> ➤ The new law should be in the interests of local, as opposed to foreign, publishers and authors. Latest publically available figures show that DALRO collected R48 million as royalties from reprographic reproduction licenses. Collection from tertiary institutions accounted for a substantial part (R38 	<ul style="list-style-type: none"> ➤ The comments on the Bill with reference to the exceptions and limitations for educational use are noted. ➤ Support for education as part of a developmental

		<p>restrain the excesses of foreign publishers to exploit our markets with excessive prices.</p> <ul style="list-style-type: none"> ➤ The DALRO blanket license gives authorization, in exchange for a per pupil fee, for the creation of multiple copies of articles for course packs, placement on the library short-term loan system, and storage on electronic reserves. It authorizes, in other words, what universities were largely doing without payment until then – thus raising educational costs to schools and students while the country struggled to expand educational access. ➤ The Bill makes a just and reasonable effort to clarify the degree to which teachers and students can lawfully make copies of excerpts to facilitate education. ➤ The law specifically provides that course packs or other forms of copying may not “incorporate the whole or substantially the whole of a book or journal issue, or a recording of a work” under normal circumstances. (12D(2))- It authorizes copying of full works only if “a licence to do so is not available from the copyright owner, collecting 	<p>million) of the royalties. Currently the majority of this licensing revenue goes to foreign publishers and authors.</p>	<p>agenda is critical for South Africa.</p> <ul style="list-style-type: none"> ➤ Internationally, exceptions and limitations to copyright are focused in domains which are most relevant for the dissemination of knowledge, namely: ➤ The exceptions for the benefit of libraries and archives; ➤ The exceptions allowing dissemination of works for teaching and research purposes; ➤ The exceptions for the benefit of people with a disability.
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		<p>society, an indigenous community or the National Trust on reasonable terms and conditions”; “where the textbook is out of print”; “where the owner of the right cannot be found”; or where the right holder is engaged in anticompetitive conduct in the form of excessive pricing. (Copyright Amendment Bill Section 12D(3)-(4). In each case, no copying is permitted for commercial gain, (12D(5)), and the copying must be restricted to the “extent justified by the purpose.”</p>		
<p>76. Andrew Rens</p>	<ul style="list-style-type: none"> ➤ Support the CAB for its promotion of technological adaptability and education. 	<ul style="list-style-type: none"> ➤ The 1978 Copyright Act is outmoded and requires updating to be suitable for the digital environment. The Amendment Bill [B 13B—2017] includes a number of important provisions which are necessary to update the Copyright Act for technological adaptability. ➤ The Fair Use provision introduced in Section 12A is essential if South Africa is to adapt to a rapidly changing technological environment. ➤ Fair use enables online education. ➤ The factors that must be taken into account include the nature of the use and the effect of the 	<ul style="list-style-type: none"> ➤ Article 12B(1)(b) should clarify that it is use by way of illustration refer to fair practice as Article 10(2) of the Berne Convention does. ➤ The Bill already contains a provision enabling parallel import in section 12B (6) which states that the first sale or other assignment of ownership exhausts the right of importation in respect of that copy. However, conflicting provisions in the definition of an infringing work (section 1 of the current Act), infringement (section 23 (2) of the current Act, and section 26 of the Bill), and Section 28 (2) must be amended. ➤ Despite this policy the anti-circumvention provisions in the Bill remain problematic. There are two 	<ul style="list-style-type: none"> ➤ Support for the CAB is noted and the comments. ➤ 12B(1)(b) is clear and can be further clarified in the regulations for further certainty. ➤ Noted and its correct that the Bill contains a parallel importation clause, extensive work was done with two academics and a panel of experts on technical issues of the Bill including definitions to ensure that there were no conflicts and it is our view that there are no conflicts. ➤ Comments on the 2013 IP Policy are noted, it is

		<p>use upon the potential market for or value of the work. Commercial uses are less likely to be fair. The provision has an internal balance between the interests of copyright rights holders who rely on copyright and film-makers, artists, teachers and learners who need to make fair use of copyright works to create new works and engage in education.</p> <ul style="list-style-type: none"> ➤ Fair Use is future proof. 	<p>problems; overlap and lack of clarity through treating circumvention as copyright infringement and an inadequate provision authorizing circumvention to do an act already authorized by the legislation.</p> <ul style="list-style-type: none"> ➤ Section 27(5A) should be eliminated from the Bill and all the prohibitions on circumvention issues dealt with clearly in one place; Section 28O. 	<p>noted that over strict anti-circumvention provisions and TPMS can hamper exceptions and limitations especially for a developing country. After extensive consultations from 2013 an appropriate balance needed to be struck and to have safeguards for authors in the Bill as allowed under the WCT, therefore the CAB provided for this.</p>
77. NAPTOA	<ul style="list-style-type: none"> ➤ Support to the CAB in as far as it relates to educators. 	<ul style="list-style-type: none"> ➤ Proposed new section 12D of the Copyright Act (clause 13 of the Amendment Bill) will enhance quality learning in schools and academic institutions and will benefit education as a whole. ➤ The proposed amendment will mean that educators will no longer have to work under fear that they might be transgressing the Copyright Law if they need to copy from works to benefit the learning experience of their learners or students. We also believe that the limitations, set as part of the exemption provisions for education, is sufficient to prevent abuse of the exemption by educators. 	<ul style="list-style-type: none"> ➤ None 	<ul style="list-style-type: none"> ➤ Comments on 12D noted and support for the exceptions and limitations for educational use.

<p>78. RECREATE ZA</p>	<ul style="list-style-type: none"> ➤ Supports the CAB 	<ul style="list-style-type: none"> ➤ As much as we are creators, we are users of existing cultural products. Currently our work can be blocked through censorship by those who claim to own our culture. Moreover, we often do not own the work we create. ➤ The final draft of the Copyright Amendment Bill Draft has reintroduced the exceptions for computer programs which were in the original 2017 Bill. We applaud this revision. The exception for computer programs is a well-crafted exception modelled on EU law that has been in place since 1991. The exception clarifies that copies of software code may be made to “achieve the interoperability of an independently created computer program with other programs.” ➤ Several provisions have similar wording, requiring royalties to be paid on works after the “assignment” of copyright. As creators of work that rely on selling our works to others, we are weary of provisions of law that encumber sales with additional duties. ➤ Often, photographers, filmmakers and others rely on our ability to sell works, not on 	<ul style="list-style-type: none"> ➤ ReCreate commends the Bill for including a hybrid fair use right that combines a flexible general user right with a series of specific exceptions. ➤ Strongly support the proposed fair use clause. ➤ Delete sections 6A, 7A and 8A in their entirety. ➤ The Bill does not address the common situation in which a creator seeks to use a work, or the source material to create the work, for purposes other than that for which it is commissioned. A filmmaker, for example, should retain rights to show a work internationally that was commissioned only for the local market. ➤ Although the law requires that CMOs be controlled by their members, it lacks specific requirements in this regard. ➤ Penalties are excessive. 	<ul style="list-style-type: none"> ➤ Comments are noted. ➤ The authors have been deprived of the right to their royalties. This provision aims to ensure royalties are paid for creative work. In the music industry, provision was made, however not specific and it was abused hence the inclusion of 6A. ➤ These Sections (6A, 7A, 8A) have been added to address injustices of the past. ➤ Assignment of rights is a reality facing authors. There is freedom to contract, where a right holder can opt for their preferred remuneration model (e.g once off lump sum payment) and other arrangements. These sections serve as protection for authors. ➤ The Bill addresses the rights of authors more than in the principal Act when it comes to commissioned works. When the use is other than that one for which it is commissioned, it is in
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		<ul style="list-style-type: none"> ➤ continued royalty streams, for our income. We are not aware of other laws with similar provisions. We are unclear how the provision might affect the sale of our works. We call for this issue to be deleted from the present bill. 		<p>case of the one who commissions. The concern about the author is noted. In the contract arrangement the author can negotiate for this. This matter to be considered in future.</p> <ul style="list-style-type: none"> ➤ Chapter 1A provides more governance requirements for collecting societies (CMOs). Regulations will provide guidance on the implementation including on matters impacting on members and their involvement. ➤ The legislation is outdated and stronger penalties are required to act as a deterrent. This was debated extensively and the view is that the penalties suffice. The courts can use discretion in some instances depending on circumstances and issue lower penalties.
79. AUSTRALIAN DIGITAL ALLIANCE	<ul style="list-style-type: none"> ➤ Supports the exceptions and limitations in the CAB 	<ul style="list-style-type: none"> ➤ Flexible exceptions that are appropriately targeted at reasonable and fair activities increase the efficiency of copyright systems and remove 		<ul style="list-style-type: none"> ➤ Comments are noted.

		<p>barriers to access to knowledge for all.</p> <ul style="list-style-type: none"> ➤ These amendments will also fulfill South Africa's obligations under the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, and will confirm South Africa's support for the Treaty proposals currently being put forward by the African Group at WIPO. ➤ Australia's Productivity Commission has strongly recommended the adoption of fair use as part of our own copyright reform, as the best way to promote innovation and cultural growth by allowing our copyright system to "better adapt to technological change and new uses of copyright material, without compromising incentives to create. Improved access to copyright works would increase economic activity and community welfare". 		
80. Supporting the CAB		<ul style="list-style-type: none"> ➤ Education International (EI) ➤ Wits Scholarly Communications and Copyright Services Office ➤ BlindSA ➤ SA Right to Read Coalition ➤ African Library and Information Association (AFLIA) 		➤ Noted.

81. Individuals Supporting the Bill	Support the Bill	<ol style="list-style-type: none"> 1. Alex Xolo 2. Simamkele Matuntuta 3. Deoudoné Pretorius 4. Nicola Macleod 5. Sylvia Akach 6. Mpho Osei-Tutu 7. Dineo Nchabeleng 8. Mr Tiisetso Montshosi 9. Audrey Nicole Mthembu 10. Emilie Godwin 11. Tumisho Masha 12. Vuyo Ngcukana 13. DOREEN MORRIS 14. Nombali Nxumalo 15. Sindiswa Mampondo 16. Takalani Sioga 17. Thokozani Mngomezulu 18. Mmapula Mmetle 19. Justin Swartz 20. Glow Mamii 21. Annalinde Singh 22. Mikayla Jean 23. Lenah Sibisi 24. Kelly Fraser 25. Hannah Rudnicki 26. Lungelo Lungi Motaung 27. Zander Roux 28. Brigitte Madiba 		➤ Noted.
82. Individuals rejecting the Bill	Rejects the Bill	<ol style="list-style-type: none"> 1. Thierry Cassuto 2. Vlokkie Gordon 3. Bianca Schmitz 4. Shane Vermooten 5. Janet du Plessis 		➤ Noted.

