



**the dti**

---

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

**The Performers' Protection Amendment  
Bill**

**Presentation to the Select Committee on Trade  
and International Relations  
6 March 2019  
Parliament - CAPE TOWN**

## Purpose

The purpose of this presentation is to brief the Select Committee on Trade and International Relations on the responses to the public submissions on the Performers' Protection Amendment Bill (PPAB)

## Contents

- **Written Submissions on Performers Protection Amendment Bill:**
  - **Definitions**
  - **Contractual Freedom**
  - **Remuneration Model**
  - **Moral Rights**
  - **General comments**
  - **Conclusion**

## Definitions

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none"> <li>▪ NAB</li> <li>▪ Netflix</li> <li>▪ MNET and Multichoice</li> </ul>	<ul style="list-style-type: none"> <li>▪ The definition of a performer is rather broad and it includes any person who acts, sings, delivers, declaims, plays in, or otherwise performs in any of the specified works.</li> <li>▪ 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.</li> <li>▪ The definition of "producer" is unclear</li> </ul>	<ul style="list-style-type: none"> <li>▪ 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. Extras or incidental performance cannot qualify as performers. The definition in WPPT exclude extras, also in the US.</li> <li>▪ The South African developmental agenda and historical deprivation informs the on-going equitable remuneration.</li> <li>▪ The Bill defines producer.</li> </ul>



## Remuneration models

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none"> <li>▪ Cliffe Dekker &amp; Hofmeyer</li> <li>▪ Netflix</li> <li>▪ Nambitha Mpumlwana</li> </ul>	<ul style="list-style-type: none"> <li>▪ It is submitted that the performers in the audio visual sector prefer the buy out model which is international practice as opposed to royalty based model.</li> <li>▪ 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.</li> <li>▪ Collective bargaining agreements are a better path to balancing interests of talent and producers, rather than legislation creating royalty payments – but in any event legislation should embrace alternative approach as long as the result is obtained.</li> <li>▪ 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. 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.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The different remuneration models were taken into consideration and discussed. The language of the Bill had to be considered. It is noted that various models can be considered. The performer must be remunerated and the agreement must take into account the usage of the fixated performances.</li> <li>▪ The Bill incorporates Beijing Provisions which statutorily affords performers with exclusive economic rights to continue to earn royalty on use of their performances. SA will be joining the Beijing Treaty. These provisions are introduced to avail a royalty based model for performers. The world is moving in this policy direction.</li> </ul>

## Moral Rights

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none"> <li>South African Guild of Actors</li> </ul>	<ul style="list-style-type: none"> <li>It is submitted that Moral Rights for performers are not clearly anchored in the Performers Protection Bill.</li> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>Moral Rights are introduced in the Bill. The Copyright Amendment Bill already had provisions for moral rights.</li> </ul>





## General Comments

Stakeholder	Issue in the Submission	Dti Response
<ul style="list-style-type: none"> <li>▪ RISA</li> </ul>	<ul style="list-style-type: none"> <li>▪ Recommends that section 3A (3)(c ) should be deleted. Alternatively, this section should be amended</li> <li>▪ 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</li> <li>▪ Recommends that sections 8D and 3A(3)(a) of the PPAB should be removed.</li> <li>▪ Recommends that section 3A(3)(c) should be deleted from the PPAB to prevent any constitutional vagueness in the Bill</li> <li>▪ Recommends that section 3A(3)(c) should be deleted from the PPAB to prevent arbitrary deprivation of property.</li> <li>▪ Section 8D (3) should be deleted from the PPAB.</li> <li>▪ Section 8(2)(f) should be deleted.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The sections suggested to be removed are core to the rights of the performers. They were deliberated at length at the PC. Removing them will disadvantage the performers. The amendments are some of the core proposals to ensure performer's protection and access to economic rights.</li> </ul>

## Conclusion

- The Select Committee on Trade and International Relations to note the public submissions and the responses from **the dti**.



the dti

Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA



Thank You