

Thursday, 15 February 2024]

No 13—2024] SIXTH SESSION, SIXTH PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

THURSDAY, 15 FEBRUARY 2024

TABLE OF CONTENTS

COMMITTEE REPORTS

National Assembly

- | | | |
|----|--------------------------------------|---|
| 1. | Trade, Industry and Competition..... | 2 |
| 2. | Trade, Industry and Competition..... | 8 |

COMMITTEE REPORTS

National Assembly

1. Report of the Portfolio Committee on Trade, Industry and Competition on the President's reservations regarding the Copyright Amendment Bill, dated 14 February 2024

The Portfolio Committee on Trade, Industry and Competition, having reconsidered the Copyright Amendment Bill [B13F-2017] (retagged as a sec 76 Bill) (*Announcements, Tablings and Committee Reports*, 18 June 2021), as amended by the National Council of Provinces and returned to the National Assembly for concurrence (*Announcements, Tablings and Committee Reports*, 28 September 2023, p 5), reports as follows:

The Bill seeks to amend the Copyright Act, 1978 (Act No. 98 of 1978), so as to define certain words and expressions; to allow for further limitations and exceptions regarding the reproduction of copyright works; to provide for equitable remuneration or the sharing of royalties in copyright works; to provide for the payment of equitable remuneration or royalties in respect of literary, musical, artistic and audiovisual works; to provide for resale royalty rights; to provide for recordal and reporting of certain acts; to provide for the accreditation of collecting societies; to provide for a mechanism for settlement of disputes; to provide for access to copyright works by persons with disabilities; to provide for the licensing of orphan works; to strengthen the powers and functions of the Copyright Tribunal; to provide for prohibited conduct in respect of technological protection measures; to provide for prohibited conduct in respect of copyright management information; to provide for protection of digital rights; to provide for certain new offences; and to provide for matters connected therewith.

The report provides a background on the Committee's initial process in 2021 and 2022 in section A. It then outlines the process followed in considering the Bill as amended by the National Council of Provinces in section B. Section C provides the expressed minority views and section D captures the Committee's recommendation to the National Assembly.

A. Overview of the process followed by the Committee on the Copyright Amendment Bill

On 1 June 2021, the National Assembly adopted the Committee's report in which the Committee outlined how it intended to correct any procedural defect (*Minutes of Proceedings, National Assembly*, 1 June 2021).

On 4 June 2021, the Committee placed adverts in national and regional newspapers inviting stakeholders and interested parties to submit written submissions with reference only to clause 13 (sections 12A, 12B, 12C and 12D), clause 19 (section 19B) and clause 20 (section 19C) of the Copyright Amendment Bill [B13B-2017]. The Committee also invited stakeholders and interested parties to submit written submissions with reference to the alignment of the Copyright Amendment Bill [B13B-2017] with the obligations set out in international treaties.

The Committee received 91 submissions in this regard. The Committee carefully considered several complex legal and policy matters given the international reach, and the impact on domestic constituencies, as well as to ensure that the process was constitutionally sound.

Furthermore, in preparation for the public hearings, the Committee held a workshop on 3 and 4 August 2021 to provide the new members of the Committee with a conceptual framework of copyright and related rights, with a focus on the artist resale right (resale royalty right in the Copyright Amendment Bill [B13B-2017]) and performers' rights for sound recordings and audiovisual works. The workshop also covered key theoretical concepts and practices in these areas, as well as the international framework for protecting copyright and related rights.

On 16 November 2021, informed by the inputs received from the Department of Trade, Industry and Competition and Parliament's Constitutional and Legal Services Office on the submissions received, and its deliberations, the Committee determined that it may be required to seek permission from the National Assembly to consider matters that fall outside the scope of the Amendment Bill. These matters would be permissible notwithstanding the limitations of the process, as it was within the scope of the reservation pertaining to alignment with international treaties.

On 1 December 2021, the National Assembly granted the Committee permission to inquire into amending other provisions of the Copyright Act (*Minutes of Proceedings, National Assembly, 1 December 2021*).

On 4 December 2021, the Committee placed adverts in national and regional newspapers inviting stakeholders and interested parties to submit written submissions with reference to the additional provisions. The Committee received 53 submissions in this regard.

The Committee continued with its deliberations on 11, 17, 18 and 25 May 2022 considering the inputs and responses from the Department and Parliament’s Constitutional and Legal Services Office to the additional clauses advertised.

On 10 June 2022, the Committee adopted its report and recommended that the National Assembly approves the second reading of the Copyright Amendment Bill [B13D-2017].

B. Process followed by the Committee with respect to amendments affected by the National Council of Provinces

On 26 September 2023, the National Council of Provinces passed the Copyright Amendment Bill [B13F-2017] and returned it to the National Assembly for concurrence. The Bill was subsequently referred to the Portfolio Committee on Trade, Industry and Competition for consideration and report.

On 6 February 2024, the Committee received a briefing from the Department and Parliament’s Constitutional and Legal Services Office respectively. The National Council of Provinces’ amendments relate to the following clauses:

- **Clause 1 – Section 1:** Clause 1 is amended by an addition of the words “any entity” and “on a non-profit basis” to the definition of “authorized entity” and the deletion of the definition of “broadcast”;
- **Clause 5 – new Section 6A:** Clause 5 is amended by providing for “equitable remuneration” in addition to a share of royalties;
- **Clause 7 – new Section 7A:** Clause 7 is amended by providing for “equitable remuneration” in addition to a share of royalties;
- **Clause 9 – new Section 8A:** Clause 9 is amended by providing for “equitable remuneration” in addition to royalties;
- **Clause 15 – new Section 12B:** Clause 15 is amended by the deletion of the phrase “of ownership” after “assignment”;
- **Clause 22 – new Section 19D:** Clause 22 is amended to align the new section 19D with the Constitution Court judgment in the matter of *Blind SA v Minister of Trade, Industry and Competition a.o [2022] ZACC 33*. In this regard—

- The positioning in the text of the reference to an authorized entity is moved to clarify that this entity is as defined and need not be prescribed;
- Amendments are made to clarify that an accessible format copy may be made from a copy that a qualifying person has lawful access to;
- **Clause 24 – Section 21:** Clause 24 is amended by providing for “equitable remuneration” in addition to royalties;
- **Clause 26 – new Section 22A:** Clause 26 is amended by providing for “equitable remuneration” in addition to royalties;
- **Clause 27 – new Sections 22B, 22C, 22D and 22E:** Clause 27 is amended by providing for “equitable remuneration” in addition to royalties;
- **Clause 29 – Section 27:** Clause 29 is amended to correct a drafting error so that the offence reads correctly and does not include a lawful defence as one of its elements;
- **Clause 31 – new Section 28P:** Clause 31 is amended to clarify that a legal defence would include any act permitted by law. It also is amended to correct a consequential amendment not effected when “services” were included in the phrase “technological protection measure circumvention device”;
- **Clause 33 – new Section 29A:** Clause 33 is amended by providing for “equitable remuneration” in addition to royalties;
- **Clause 35 – Section 39:** (i) Clause 35 is amended to clarify that the powers granted to the Minister to prescribe matters to be included in agreements do not extend to matters that would limit contractual freedom. In this regard, the words “standard elements” is used instead of “compulsory and standard terms” and the phrase “to ensure that rights or protection afforded by this Act are duly provided for” is included to stress that the elements relate to protection of vulnerable parties and is not intended to limit contractual freedom. (ii) It is further amended so that royalty rates and tariffs can only be prescribed in respect of resale royalty rights. (iii) Furthermore, it is amended by providing for “equitable remuneration” in addition to royalties;
- **Clause 37 – new Schedule 2:** Clause 37 is amended by providing for “equitable remuneration” in addition to royalties;
- **Clause 40 – Short title and commencement:** Clause 40 is amended in respect of commencement. It is necessary that the clauses dealing with the judgment in the matter of *Blind SA v Minister of Trade, Industry and Competition a.o [2022] ZACC 33* are brought into effect on publication of the assent of the Act. To ensure that the Act is brought into

operation within a reasonable time, a limit of 24 months is provided to allow the Minister to ready the Department for implementation of the Act.

- **Long title:** Making provision for “equitable remuneration” in addition to royalties.

C. Minority views were expressed on the following aspects contained in this report:

The Democratic Alliance expressed a view that it would not be supporting the Bill, as its concerns in relation to the Bill had not been adequately addressed. Its concerns related to the ambiguity with respect to certain provisions, the lack of participation of stakeholders, and the restriction on the economic rights of and competitiveness for artists and performers.

The Freedom Front Plus was of the view that the regulatory power given to the Minister in terms of section 39(cG) to determine standard elements for agreements to be entered into, that would ensure the rights of protection as provided in the Bill, would be unprecedented. They were of the view that further public comments should have been elicited on this amendment.

They were further of the view that the exclusion from the definition of “performers” of extras, ancillary participants and incidental participants, would deprive certain performers of existing rights to equitable remuneration or a share in royalties emanating from audiovisual works.

The Freedom Front Plus would in principle support a bill that solely dealt with the requirements as outlined in the Constitutional Court judgment with respect to *Blind SA v. Minister of Trade, Industry and Competition and Others* (CCT 320/21), and further expressed support for South Africa’s accession to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind or Visually Impaired.

The African Christian Democratic Party expressed a view not in support of the Bill due to challenges relating to inadequate consultation, as well as the introduction of and lack of comprehensive market research on the impact of the fair use provisions.

D. Recommendation

The Portfolio Committee on Trade, Industry and Competition recommends that the House adopts this report and approves the Copyright Amendment Bill [B13F-2017] for resubmission to the President.

The Democratic Alliance, the Freedom Front Plus and the African Democratic Christian Party voted against the adoption of the Bill.

Report to be considered.

2. Report of the Portfolio Committee on Trade, Industry and Competition on the President's reservations on the Performers' Protection Amendment Bill, dated 14 February 2024

The Portfolio Committee on Trade, Industry and Competition, having reconsidered the Performers' Protection Amendment Bill [B24F-2016] (retagged as a sec 76 Bill) (*Announcements, Tablings and Committee Reports*, 18 June 2021), as amended by the National Council of Provinces and returned to the National Assembly for concurrence (*Announcements, Tablings and Committee Reports*, 28 September 2023), reports as follows:

The Bill seeks to amend the Performers' Protection Act, 1967 (Act No. 11 of 1967) so as to insert, delete or substitute certain definitions; to provide for performers' economic rights; to extend moral rights to performers in audiovisual fixations; to provide for the transfer of rights where a performer consents to fixation of a performance; to provide for the protection of rights of producers of sound recordings; to broaden the restrictions on the use of performances; to extend the application of restrictions on the use of performances to audiovisual fixations; to provide for royalties or equitable remuneration to be payable when a performance is sold or rented out; to provide for recordal and reporting of certain acts and to provide for an offence in relation thereto; to extend exceptions from prohibitions to audiovisual fixation and sound recordings and include exceptions provided for in the Copyright Act, 1978 (Act No. 98 of 1978); to provide for the Minister to prescribe standard elements to be included in agreements as well as guidelines for a performer to grant consent under this Act; to provide for prohibited conduct and exceptions in respect of technological protection measures and copyright management information respectively; to provide for further offences and penalties; to substitute certain expressions; to provide for transitional provisions; and to provide for matters connected therewith.

The report provides a background on the Committee's initial process in 2021 and 2022 in section A. It then outlines the process followed in considering the Bill as amended by the National Council of Provinces in section B. Section C provides the expressed minority views and section D captures the Committee's recommendation to the National Assembly.

A. Overview of process followed by the Committee on the Performers' Protection Amendment Bill upon referral of the President's concerns

On 1 June 2021, the National Assembly adopted the Committee's report in which the Committee outlined how it intended to correct any procedural defect (*Minutes of Proceedings, National Assembly*, 1 June 2021).

On 4 June 2021, the Committee placed adverts in national and regional newspapers inviting stakeholders and interested parties to submit written submissions with reference to the alignment of the Performers' Protection Amendment Bill [B24B-2016] with the obligations set out in international treaties. The Committee received 91 submissions in this regard. The Committee carefully considered a number of complex legal and policy matters raised by the public, given the international reach, and the impact on domestic constituencies, as well as to ensure that the process going forward was constitutionally sound.

Furthermore, in preparation for the public hearings, the Committee held a workshop on 3 and 4 August 2021 to provide the new members of the Committee with a conceptual framework of copyright and related rights, including performers' rights in respect of sound recordings and audiovisual works.

As certain clauses of the Performers' Protection Amendment Bill [B24B-2016] are subject to the promulgation of the Copyright Amendment Bill [B13B-2017], the Committee agreed that it would consider both Bills simultaneously. Thus, the consideration of the Performers' Protection Amendment Bill [B24B-2016] was subject to the conclusion of the process with respect to the Copyright Amendment Bill [B13B-2017].

On 8 June 2022, the Committee formally considered the amendments to the Performers' Protection Amendment Bill [B24B-2016], as a result of the President's reservations. However, there had been no consensus reached on a number of clauses.

On 10 June 2022, the Committee adopted its report and recommended that the National Assembly approves the second reading of the Performers' Protection Amendment Bill [B24C-2016].

B. Process followed by the Committee with respect to amendments affected by the National Council of Provinces

On 26 September 2023, the National Council of Provinces passed the Performers' Protection Amendment Bill [B24F-2016] and returned it to the National Assembly for concurrence. The Bill was subsequently referred to the Portfolio Committee on Trade, Industry and Competition for consideration and report.

On 6 February 2024, the Committee received a briefing from the Department of Trade, Industry and Competition and Parliament's Constitutional and Legal Services Office respectively. The National Council of Provinces amendments relate to the following clauses:

- **Long title:** Adding the following phrase to the long title: "...To provide for the Minister to prescribe standard elements to be included in agreements ...";
- **Clause 1 – Section 1:** (i) Deleting the definition of "broadcast"; and (ii) Adding the phrase ", but does not include extras, ancillary participants or incidental participants" to the definition of "performer";
- **Clause 3 – Section 3A:** (i) Amending subsection (3) of the new section 3A:

“(3) The written agreement contemplated in subsection (2)—

(a) must at least contain the standard elements, as may be prescribed, to ensure that rights or protection afforded by this Act and the Copyright Act are duly provided for;” and
- **Clause 6 – Section 8D:** By the substitution for the introductory sentence in subsection (3) in the new section 8D, of the following subsection:

“(3) The Minister must make regulations prescribing standard elements that must be included in agreements to be entered into in terms of this Act, to ensure that rights or protection afforded by this Act and the Copyright Act are duly provided for, which contractual terms must include—“.

C. Minority views were expressed on the following aspects contained in this report:

The Democratic Alliance expressed a view that it would not be supporting the Bill, as its concerns in relation to the Bill had not been adequately addressed. Its concerns related to the ambiguity with respect to certain provisions, the lack of participation of stakeholders, and the restriction on economic rights and competitiveness for artists and performers.

The Freedom Front Plus was of the view that the regulatory power given to the Minister in terms of sections 3A(3) and 8D(3) to determine standard elements for agreements to be entered into, that would ensure the rights of protection as provided in the Bill, would be unprecedented. They were of the view that further public comments should have been elicited on this amendment.

They were further of the view that the exclusion from the definition of “performers” of extras, ancillary participants and incidental participants, would deprive certain performers of existing rights to equitable remuneration or a share in royalties emanating from audiovisual works.

The African Christian Democratic Party expressed a view not in support of the Bill due to challenges relating to inadequate consultation, as well as the introduction of and lack of comprehensive market research on the impact of the fair use provisions.

D. Recommendation

The Portfolio Committee on Trade, Industry and Competition recommends that the House adopts this report and approves the Performers’ Protection Amendment Bill [B24F-2016] for resubmission to the President.

The Democratic Alliance, the Freedom Front Plus and the African Democratic Christian Party voted against the adoption of the Bill.

Report to be considered.