

TERMS OF REFERENCE SUBCOMMITTEE ON THE COPYRIGHT AMENDMENT BILL

7 March 2018

1. Introduction

The Copyright Amendment Bill intends to address and resolve issues arising from the findings of the Copyright Review Commission, which concluded their report in 2011. These issues include:

- The non-payment of royalties;
- The lack of formalisation of the creative industry and the related abuse;
- The incidence of piracy; and
- The moral and economic rights of performers related to audiovisual fixations.

The Bill specifically focuses on the:

- Definition of certain words and expressions.
- Allowance for the reproduction of copyright work.
- Provision for the protection of copyright in artistic work
- Provision for the accreditation and registration of Collecting Societies.
- Provision for the procedure for settlement of royalties disputes.
- Allowance for the fair use of copyright work.
- Provision for access to copyright works by persons with disabilities.
- Provision for the protection of authorship of orphan works by the State.
- Provision for the establishment of the Intellectual Property Tribunal, the appointment of its members and its powers and functions.
- Provision for prohibited conduct in respect of technological protection measures and copyright management information.
- Provide for the management of digital rights.
- Provision for certain new offences.

The provisions in the Amendment Bill while taking a one size fits all approach may affect the various copyright-affected industries differently. Given the complexities of the issues for the protection of copyright to incentivise creative industries and the need to balance this with accessibility to users, the Committee constituted a Subcommittee consisting of the following members:

- Ms L Theko (African National Congress (ANC)) (Chairperson)
- Mr S Mbuyane (ANC)
- Mr G Cachalia (Democratic Alliance)
- Ms E Ntlangwini (Economic Freedom Fighters)
- Adv A Alberts (Freedom Front Plus)

2. Purpose and scope of the Subcommittee

The main purpose of the Subcommittee is to interrogate key policy areas and make recommendations to the broader Committee for its consideration in this regard. To achieve

this, the Subcommittee is tasked to identify and engage relevant stakeholders and/or experts to fully understand the complexities and possible implications of particular policy stances on copyright affected industries.

The policy areas to be focused on are:

Group 1

1. Fair use versus fair dealing (section 12/clause 10) including orphan works (section 22A/clause 22)
2. Exceptions and limitations (section 12A/clause 11; section 13B/clause 12 & section 19C/clause 18)
3. Accessibility for people with disabilities (section 19D/clause 18)
4. Parallel importation (section 12B/clause 11)
5. Freedom of panorama (section 15/not in Bill)
6. Private copying levy (not in Bill)
7. Regulation of collecting societies (sections 22B-22F/clause 23) – *Fair Use Commission Recommendation*
8. Ownership – Commissioned work and copyright ownership (section 21/clause 20); public funding (section 5(2)/clause 3 & section 22(1)/clause 21(a))

Group 2

1. Royalties – broadcasting rights (section 9A(1)/clause 8), artist's resale right (sections 9B-9F/clause 9)
2. Assignment (section 22(3)/clause 21(b) & section 39(cG)/clause 32(b))
3. The establishment, functions and processes of the Intellectual Property Tribunal (section 29/clause 29 & sections 29A-29R/clause 30)

Group 3

1. Technology – the inclusion of digital aspects and the use/limitations of copyright anti-circumvention device (sections 6-8/clauses 4-6 & sections 28O-28S/clause 27)
2. Moral rights (section 20/clause 19)
3. Translation/reproduction licences (Schedule 2/Clause 34)
4. Ensuring that proposed Amendment Bill does not conflict with the Intellectual Property Laws Amendment Act and the proposed Indigenous Knowledge Systems Bill

However, the Committee may request the Subcommittee to consider other matters arising.

3. Resources

The Subcommittee will have access to the drafting team and committee support staff to assist. The technical consultants will also be made available to assist with understanding the terminology and application of copyright law.

5. Draft programme

Date	Time	Agenda
Wednesday, 7 March 2018	13:30 – 14:45	Confirmation of names for the technical panel Planning meeting (agenda and identify stakeholders to engage) Adoption of programme for consideration by the Portfolio Committee
Tuesday, 13 March 2018	After plenary	Briefing on the Copyright Review Commission's key findings and recommendations (DTI)
Wednesday, 14 March 2018	13:00 – 14:45	Outline of key stakeholder groups in music industry, publishing, film making and broadcasting; Royalty rights/flows in relation to these (DTI)
Group 1 Discussions		
Wednesday, 28 March 2018	13:00 – 15:30	Background and discussions: (consultants and DTI) <ul style="list-style-type: none"> • Orphan works • Private copying levy • Accessibility for people with disabilities
	15:30 – 18:00	Background and engagements on Fair use vs fair dealing
Thursday, 29 March 2018	9:00 – 11:00	Fair use vs fair dealing Stakeholders <ul style="list-style-type: none"> • Experts for and against
	11:30 – 13:00	Fair use vs fair dealing – draft recommendations
Tuesday, 17 April 2018	10:00 – 15:00	Visit to Cape Town Film Studio (subject to approval)
Wednesday, 18 April 2018	14:00 – 16:30	Internal discussions and recommendations: <ul style="list-style-type: none"> • Exceptions and limitations • Freedom of panorama (may need expert view) • Parallel importation • Ownership and public funding
	14:00 – 16:30	Regulation of collecting societies Stakeholders <ul style="list-style-type: none"> • Copyright Review Commission • Existing collecting societies from all industries (music)
Friday, 20 April 2018	8:30 – 11:30	Regulation of collecting societies Stakeholders <ul style="list-style-type: none"> • Existing collecting societies from all industries
Wednesday, 2 May 2018	13:00 – 15:00	Internal discussions and recommendations on regulation of collecting societies

Date	Time	Agenda
Group 2 Discussions		
Wednesday, 9 May 2018	13:00 – 15:00	Internal discussions and recommendations: <ul style="list-style-type: none"> • Assignment • Intellectual Property Tribunal (existing Copyright Tribunal and/or other IP adjudication structures)
Thursday, 10 May 2018	14:00 – 15:00	Internal discussions and recommendations on Intellectual Property Tribunal
	15:00 – 16:30	Broadcasting rights Stakeholders <ul style="list-style-type: none"> • Broadcasters • Creative industry • Users
Friday, 11 May 2018	8:30 – 10:00	Broadcasting rights Stakeholders <ul style="list-style-type: none"> • Broadcasters • Creative industry • Users
	11:00 – 12:30	Artist Resale Rights Stakeholders <ul style="list-style-type: none"> • Experts
Wednesday, 16 May 2018	13:00 – 15:00	Internal discussions and recommendations: <ul style="list-style-type: none"> • Broadcasting rights • Artist Resale Rights
Group 3 Discussions		
Wednesday, 23 May 2018	13:00 – 15:00	Background on Technology – the inclusion of digital aspects and the use/limitations of copyright anti-circumvention device
Thursday, 24 May 2018	14:00 – 16:30	Internal discussions and recommendations on Technology and moral rights Internal discussions and recommendations on Translation/reproduction licences
	8:30 – 11:00	Internal discussions and recommendations on Translation/reproduction licences