

# Copyright Amendment Bill 2015

A submission presentation

To: Portfolio Committee on Trade and Industry  
Parliament

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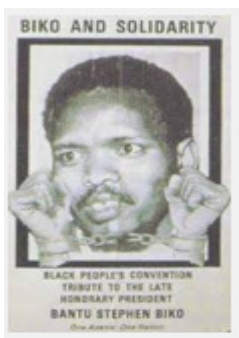
Date: 1<sup>st</sup> August 2017

**Thank you Honourable Chairperson Fubbs and Honourable members of the Portfolio Committee on Trade and Industry for the opportunity to present today.**

**After a brief introduction I will focus on 3 issues:**

- 1. Some hard facts about copyright in South Africa**
- 2. Submission detail**
- 3. Where the Bill needs attention**

# Copyright Industries - examples



Literary works – words – books etc



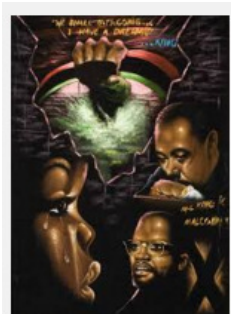
Sound recordings – CDs, music downloads, streaming



Musical works - music

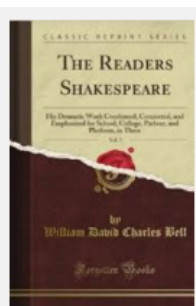


Cinematographic films – DVDs, TV, film downloads, streaming and cinemas



Artistic works – photos, art, sculpture etc

Broadcasts – broadcasters



Dramatic works – musicals, plays, opera

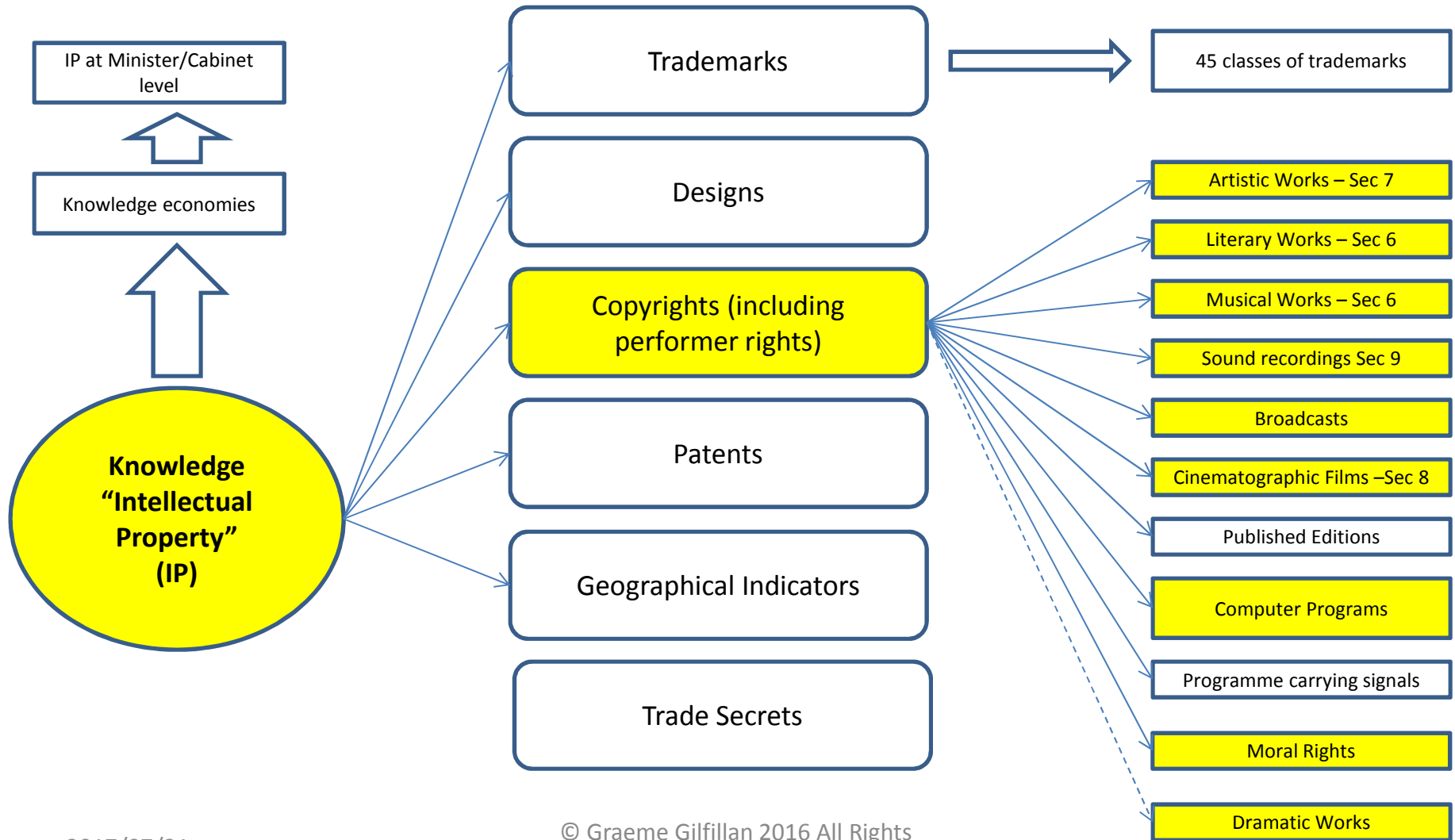
Computer programs – the code

```
function check(n)
  // check if the number n is a prime
  var factor; // if the checked number is not a prime, this is its first factor
  var c;
  factor = n;
  // try to divide the checked number by all numbers till the square root
  for (c=2; c <= Math.sqrt(n); c++)
    if (n%c == 0) // is n divisible by c?
      factor = c; break;
  return (factor);
} // end of check function

function communicate()
  // communicate with the user
  var i; // i is the checked number
  var factor; // if the checked number is not a prime, this is its first factor
  i = document.getElementById("number").value; // get the checked number
  // is it a valid input?
  if (isNaN(i) || i <= 0 || Math.floor(i) != i)
    alert ("The checked object should be a whole positive number!");
  else
    factor = check (i);
    if (factor == i)
      alert (i + " is a prime!");
    else
      alert (i + " is not a prime, " + i + " = " + factor + "*" + i/factor);
} // end of communicate function
```

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# IP Rights - links to the copyright industries



**Copyrights are movable property rights...assets and the rights therefore**

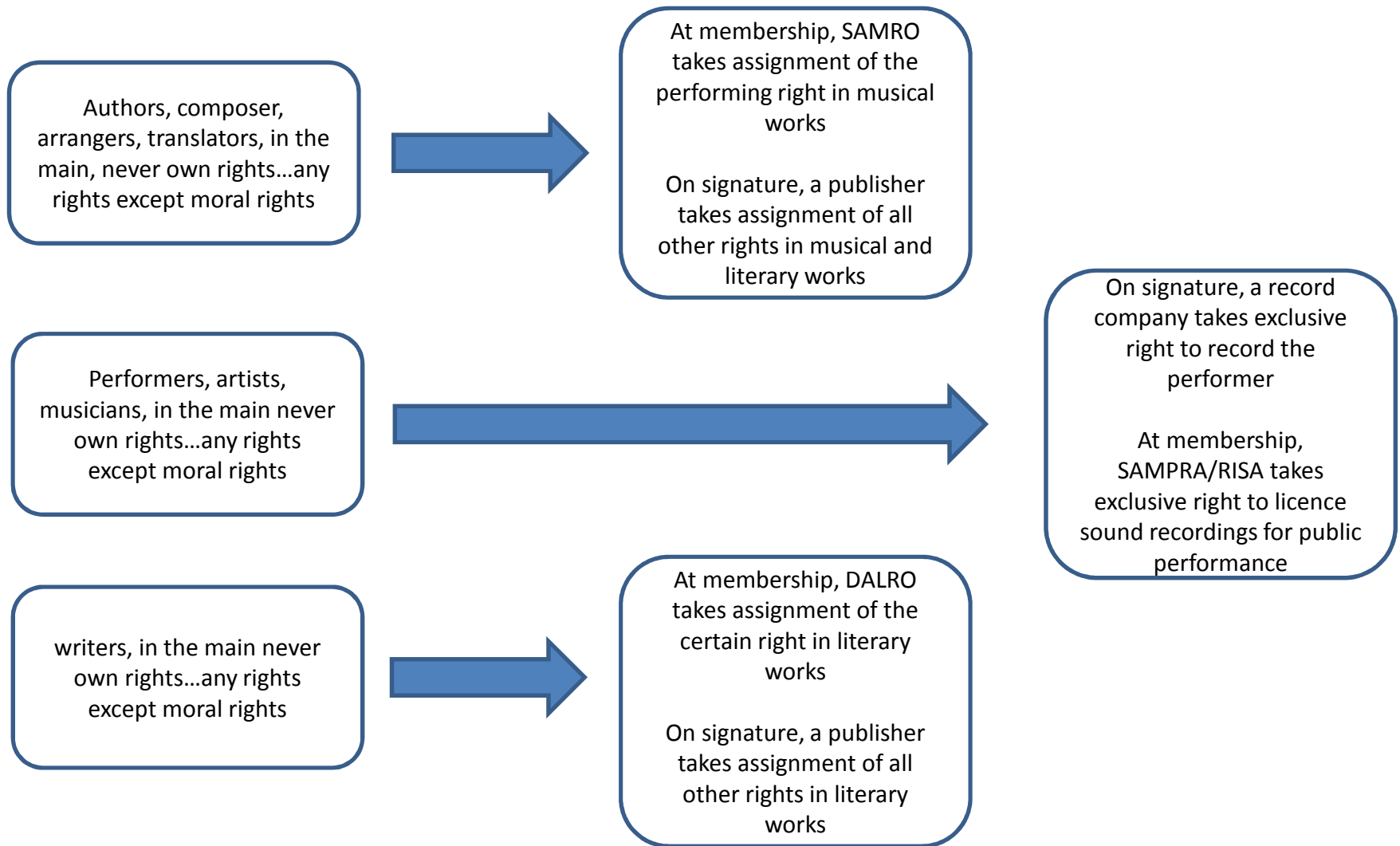
**Equals =**

**Revenue.....in the form of 'rental' income arising from use of the assets and rights variously**

**The status quo under the current  
Copyright Act 98 of 1978 as amended**

**Some hard facts  
about copyright in  
South Africa**

# Author versus copyright owners



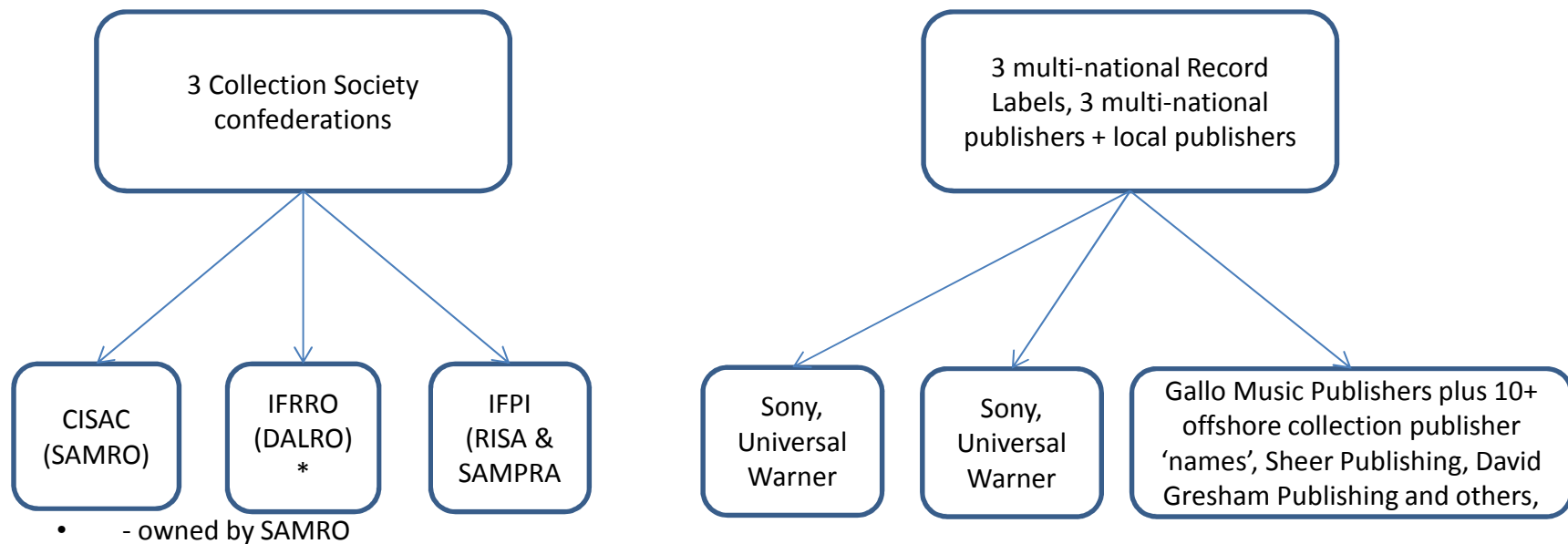
**Creators, writers and performers don't own their rights unless they own the copyright owners (i.e. publishers and record labels) owning those rights)...which many have done.**

**With the Collection Societies those rights are never owned**



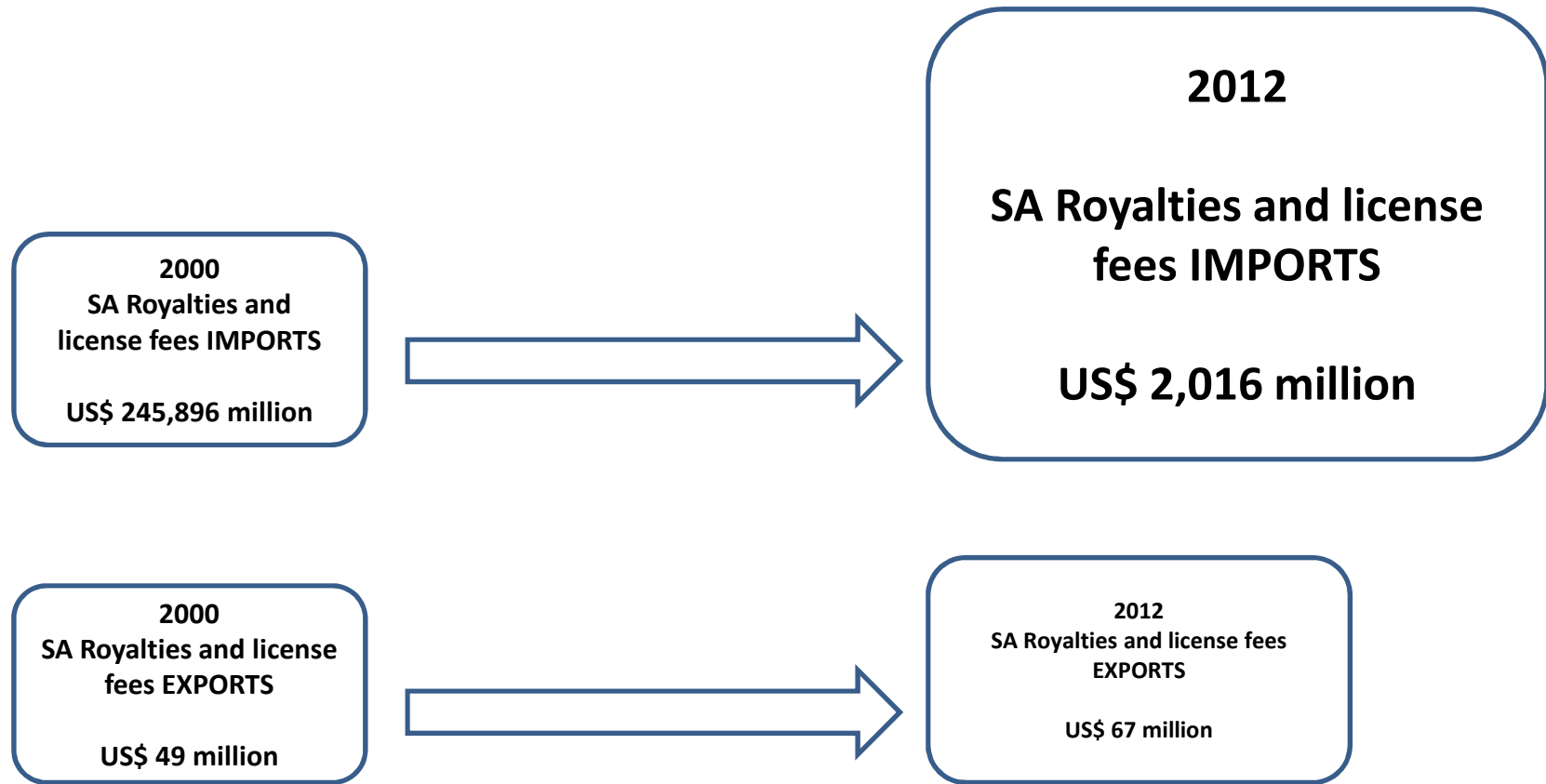
# So who are the “copyright owners” or “copyright holders”

Unpacking the stakeholders one finds:



As well as a 5 academic publishers....and book publishers

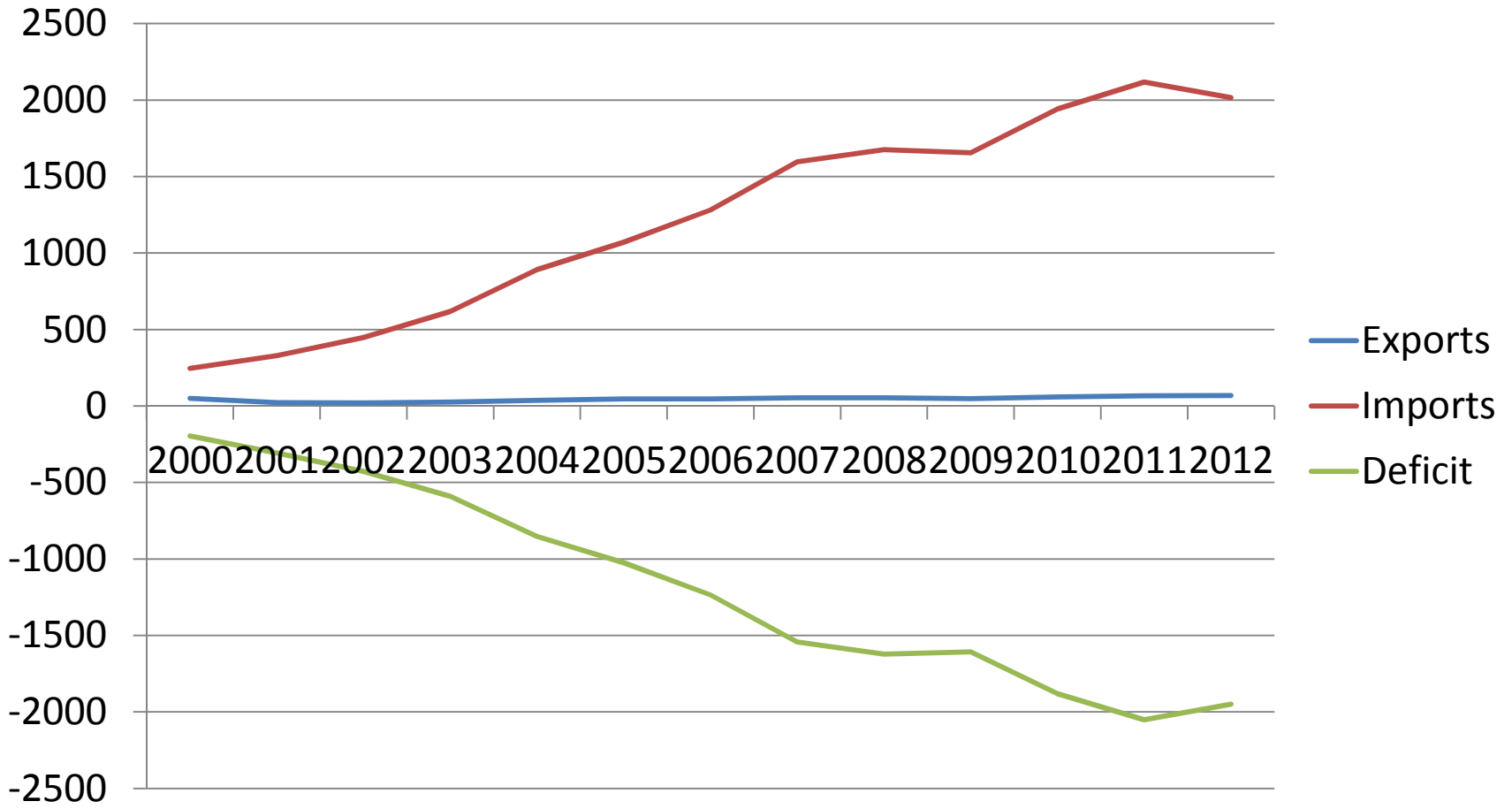
# Royalties and license fees - A massive trade imbalance



Sourced from UNCTAD

**Or seen in a graphic  
manner over time...**

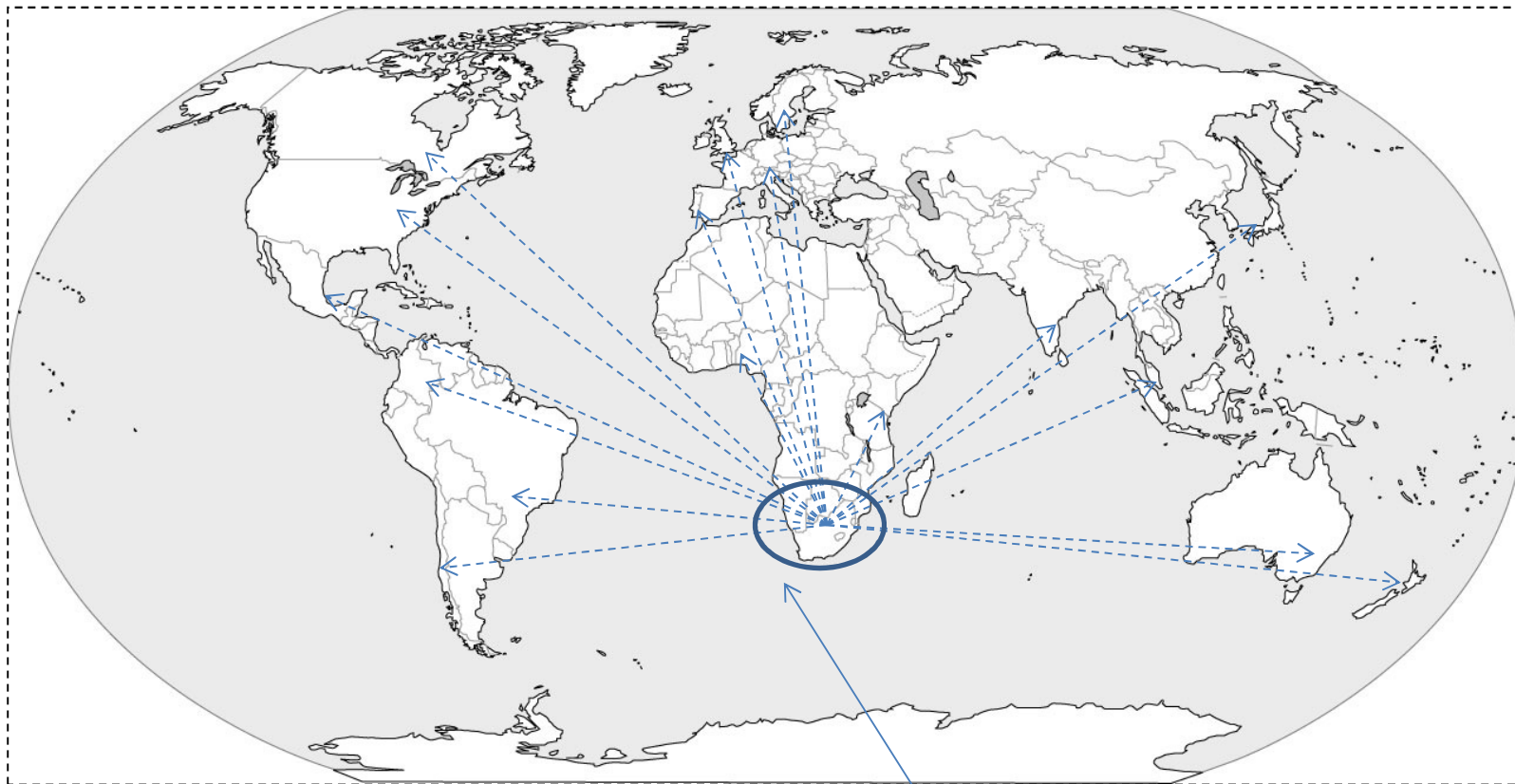
# Comparative: South Africa Creative Service Royalty Imports v Exports showing the deficit growth in millions of US Dollars – 2000 to 2012



Sourced from UNCTAD

**The straight line deficit growth can be explained in part by the market place.....and in part it bespeaks *inter alia* of the great cost to the country when the copyright law regime (the current Copyright Act 98 of 1978) is unfit for purpose of protecting and developing this country's copyrights**

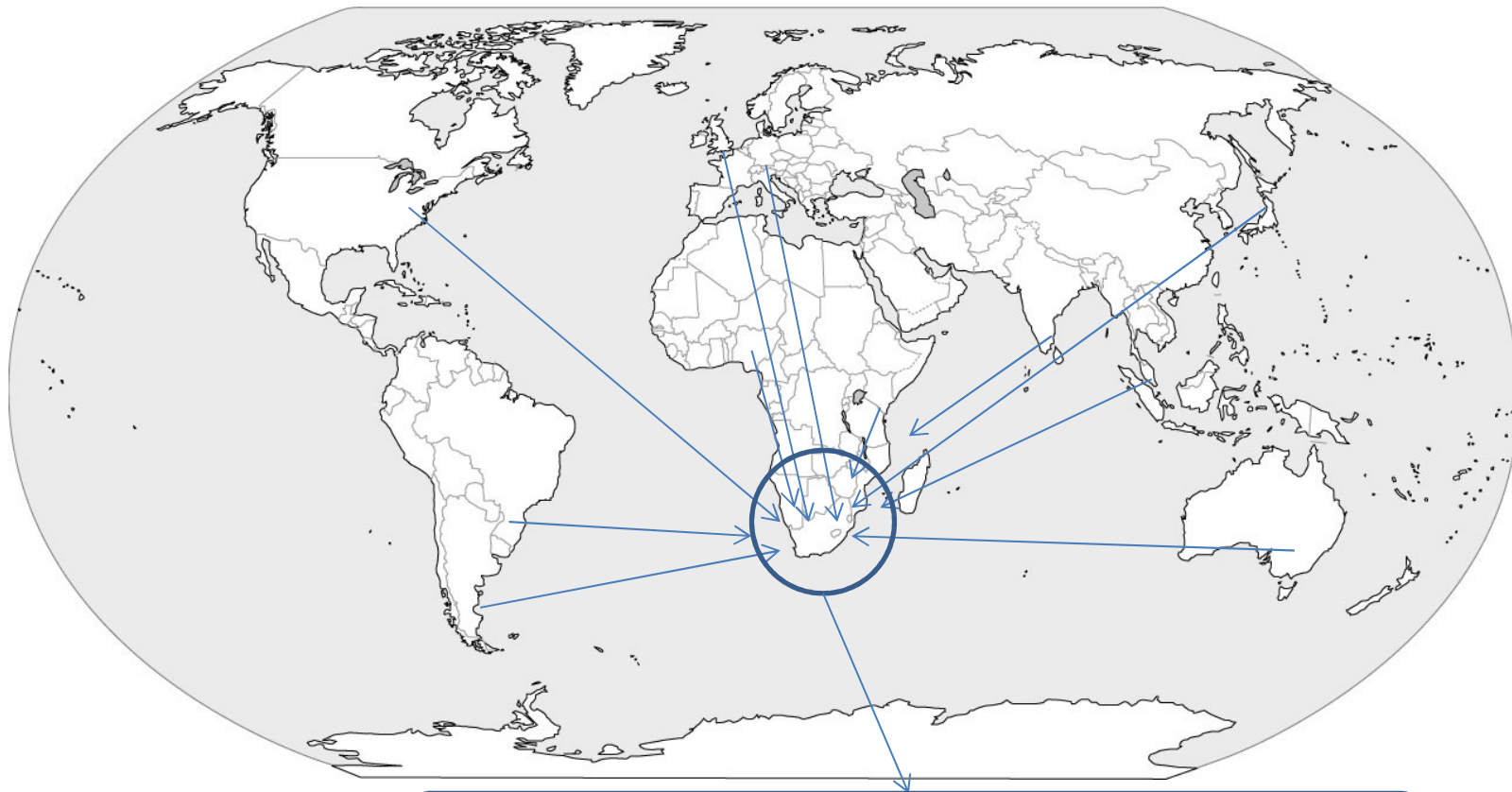
# South African works. Mechanics of global use. Licensing and assignment conduits – what is supposed to happen



Licensing & Assignment 

- Copyright licensing & Assignment Conduits:
- |   |                        |
|---|------------------------|
| 1. CISAC/BIEM societies (SAMRO & DALRO) | 4. IFPI societies      |
| 2. Music Publishers                     | 5. Record labels       |
| 3. Individual authors                   | 6. Independent artists |

# South African works use overseas. Reporting and payment – what is supposed to happen



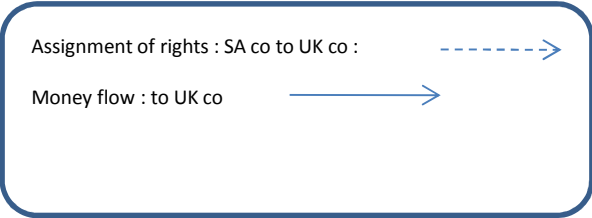
- Payout:
- |   |                                 |
|---|---------------------------------|
| 1. CISAC/BIEM societies (SAMRO & DALRO) | 4. IFPI societies (RISA/SAMPRA) |
| 2. Music Publishers                     | 5. Record labels                |
| 3. Individual authors                   | 6. Independent artists          |

**Instead**

**We find a practice  
ongoing since  
apartheid**

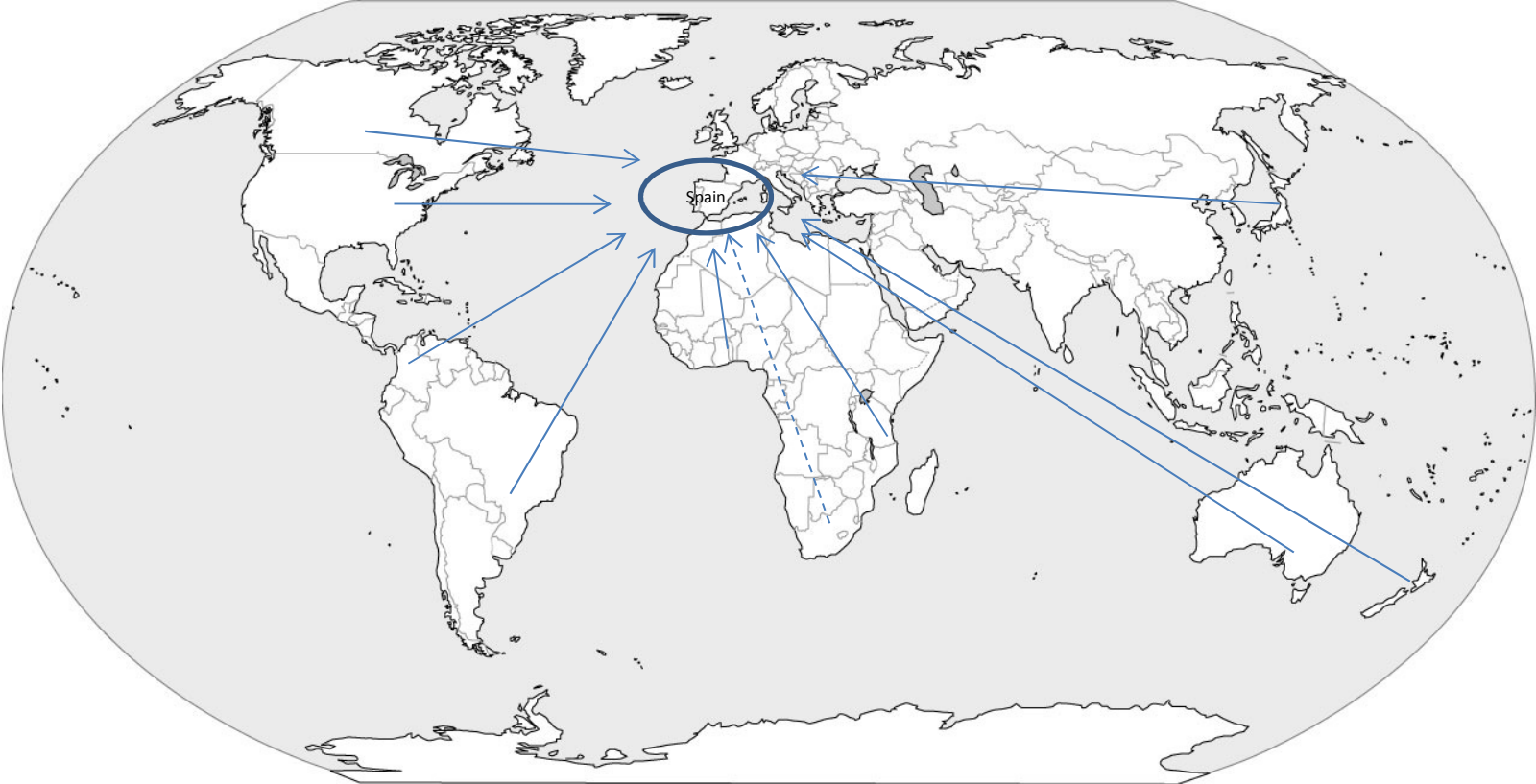
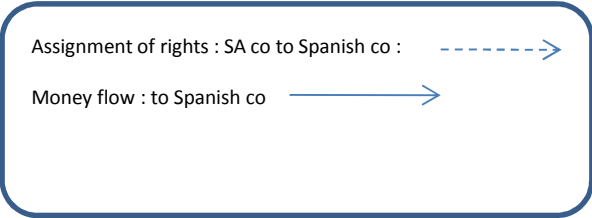


# Assignment to the UK



**With the stroke of a  
silent confidential  
pen, nor further  
income ever comes to  
South Africa again**

# Assignment to Spain



# We find this state of affairs present and represented in South African databases

<b>Label Copy</b>	<b>RNAE FOR SONY MUSIC SA</b>	<b>Date Printed</b>	<b>15/05/2017</b>
<b>Product Code</b>	<b>CDSM684</b>	<b>Price Pointer</b>	<b>CD</b>
<b>Title</b>	<b>The Essential</b>	<b>CD COPYRIGHT - (Stock Price)</b>	
<b>Artist</b>	<b>Soweto String Quartet</b>	<b>Release Date</b>	<b>26/04/2017</b>
<b>International Code</b>		<b>Track Count</b>	<b>16</b>

**546458 Nkosi Sikelel'iafrika / Artist - Soweto String Quartet**

Reuben Khemese / Sandile Khemese / Thamsanqa Khemese / Mnguni Makhosini Meshak / Graham Beggs

8018106	80.00	Universal Music Publishing	Soweto String Quartet	Via 600812: Polygram International Music	Universal Music Publishing
837008	20.00	Direct *	Breakaway Music Co Pty Ltd		Unknown Copyright-Publisher

# And viewed all over the world as viewed the lens of the National Anthem

(the authorship and ownership claims as viewed in the Brazilian database)

**Título da Obra:** 2012 NATIONAL ANTHEM OF SOUTH AFRICA      **ECAD:** 6305006      **ISWC:**

Participação			
Outros Títulos			
Referências			
Nome	Pseudo	Categoria	Sociedade
DP		COMPOSITOR/AUTOR	Não associado(a) à UBC
PHILIP DAVID SHEPPARD		ARRANJADOR	Não associado(a) à UBC
THE LONDON ORGANISING COMMITTEE OF THE O		EDITOR	Não associado(a) à UBC
UNIVERSAL MUSIC PUBLISHING MGB BRASIL LTDA	EDITORA MUSICAL BMG ARABELLA LTDA	SUBEDITOR	Não associado(a) à UBC

**Título da Obra:** DIE LIED VAN JONG SUID AFRIKA      **ECAD:** 3438870      **ISWC:**

# In the Spanish, Italian and French databases

13. [NKOSI SIKELELE](#) ISWC: T-902.502.191-4 Duration: 04:03:00 (Original Title) SIAE (INT)

Interested Party	IPN#	Role	AP	LP	P- Society	P- Share	M- Society	M- Share
<a href="#">SHABALALA BEKIZIZWE JOSEPH</a>	00084059271	CA			SAMRO	50.00%	SAMRO	
<a href="#">BLUE CHIP MUSIC BV</a>	00255873632	E			SAMRO		NS	
<a href="#">GALLO MUSIC PUBLISHERS</a>	00036589355	E			SAMRO		NS	
<a href="#">CAFE' CONCERTO S.R.L.</a>	00184962039	SE			SIAE	50.00%	SIAE	100.00%

[Domestic View](#)

[+IT](#)

22. [NKOSI SIKELELE AFRICA](#) ISWC: No preferred Duration: 00:03:27 (Original Title) SACEM (INT)

Interested Party	IPN#	Role	AP	LP	P- Society	P- Share	M- Society	M- Share
DOMAINE PUBLIC OEUVRE		CA			NS	17.00%	NS	
<a href="#">BOHETS WIM</a>	00263909740	AR			SABAM	12.45%	SABAM	12.50%
<a href="#">LOTTI HELMUT</a>	00134827080	AR			SABAM	37.35%	SABAM	37.50%
<a href="#">PIET ROELEN PUBLISHING</a>	00050033731	E			SABAM	33.20%	SABAM	50.00%

[Performer\(s\)](#)

[LOTTI HELMUT](#)

[Domestic View](#)

[+FR](#)

3. [NKOSI SIKELELE AFRIKA](#) ISWC: No preferred Duration: (Original Title) SACEM (INT)

Interested Party	IPN#	Role	AP	LP	P- Society	P- Share	M- Society	M- Share
<a href="#">SONTONGA ENOCH MANKAYI</a>	00293642543	CA			NS	75.00%	NS	0.00%
<a href="#">MKHIZE ALEXANDAR</a>	00224549472	AR			NS	8.33%	NS	0.00%
<a href="#">GALLO LTD AFRICA</a>	00021865593	E			SAMRO	0.00%	NS	0.00%
<a href="#">WARNER CHAPPELL MUSIC FRANCE</a>	00215772668	SE			SACEM	16.67%	SACEM	100.00%

[Domestic View](#)

[+default](#)

10. [NKOSI SIKELELE I AFRIKA](#) ISWC: No preferred Duration: 00:03:00 (Original Title) BUMA (INT)

Interested Party	IPN#	Role	AP	LP	P- Society	P-Share	M- Society	M-Share
<a href="#">DP</a>	00039657154	C			NS	100.00%	NS	100.00%

[Domestic View](#)

[+NL](#)

9. [NKOSI SIKELELE](#) ISWC: No preferred Duration: (Original Title) LatinNet >SGAE (INT)

Interested Party	IPN#	Role	AP	LP	P- Society	P- Share	M- Society	M-Share
<a href="#">NGAPE JOHN</a>	00115185102	CA			NS	50.00%	NS	
<a href="#">REAMUSIC PUBLISHERS</a>	00072853954	E			SAMRO		NS	
<a href="#">SONY ATV MUSIC PUBLISHING HOLDINGS LLC S EN C</a>	00270595845	SE			SGAE	50.00%	SGAE	100.00%

[Domestic View](#)

[+ES](#)

**Reflects a disturbing  
state of current  
affairs.**

**Intervention we have.....**

**Enter the stage the new Copyright Amendment Bill which for the first time in the history of South African copyright law properly (though some will disagree) introduces (forces some would say) the State into the fray**



**My submission addresses certain disinformation alleged to represent the views of creators, author and performers.**

**Such disinformation instead was concocted by copyright owners through their representative organizations.....as views, without consultation or notice to members**

# **Extension users' "rights" at the expense of creator's rights (*Users as copyright holders*)**

- **Owners have been "users" for decades and will remain so e.g. SABC, Lalela Music, DSD and every department of state and parastatal – nothing to do with the Bill**
- **The value gap is a phenomenon of the digital age speaking to the disintegration of the reproduction right and the rise of the share of advertising/subscription revenue – nothing to do with the Bill**
- **Local creators have clarity with the introduction of the provision clause in Sect 4,5,6 and 8 ref 50% regardless who owns**
- **All creators started at the same place.....learning.....and thus most creator support access to music education having the noose of profit before access removed. Copyright owners see things differently**

# **Automatic usurpation of copyright where composers and authors are commissioned or funded to create musical or literary works**

- **Sec 5 (2) is critically important to legal certainty with the insertion of two words “funded by” alongside “made by” - Speaks to works commissioned by the State and the ownership thereof**
- **Brings the State into being a “copyright owner” and having to take responsibility thereof which should have occurred decades back**
- **Disrupts a decade old status quo that has only benefitted the few and has obstructed transformation where it matters i.e. the money**
- **Section 21 (1) (c) remains unchanged and the automatic right for creators to be remunerated is detail in the provided that clause in Sec 4,5,6 and 8 – legal certainty where there was none**

# **Introduction of the US doctrine of Fair Use without holistic consideration of the case law imperatives of that doctrine**

- **The need to engage “fair use” is a matter of the future not the past. The US copyright law arise from the UK common law in the same way SA does**
- **Without some aspect of “fair use” ubiquitous platforms and media used today would be (are) infringing**
- **Approaches of more than 10 (fair dealing) countries that incorporate fair use provisions and fair dealing provisions advise that this is the path to choose**

# Widening the Gap

- As advised above the value gap is a phenomenon of the digital age speaking to the disintegration of the reproduction right and the rise of the share of advertising/subscription revenue – nothing to do with the Bill
- Bringing in fair use provisions brings those at the coalface of the “value gap” .....Google, You Tube and others into having to deal with copyright owners, it does not shield them
- The EU is *the* current domain legislatively where the “value gap” is being addressed

# Local content

- **It must be in the scope of the Ministers responsibilities to address this matter of local content at any time**
- **The counterfactual confirms that this is a sensitive local, national and international issue**
- **What we know is that if there is a strong commitment to local culture there are strong local industries (e.g. the US)**
- **English is not the only language in South Africa therefor tipping the scale in favour of those who export only English to South Africa is not good policy**

**The Copyright Amendment  
Bill....is it ready?**

**we'll...not  
yet...but nearly**

**All present including those with contrarian view to this presentation would probably concur with the view that some tweaks are needed where challenges remain respectively**

**At the heart of these challenges is the need for improved, not diminished, legal certainty**



# Issues remaining with the Bill

- **No clause giving the State access to Collection Society and Copyright owner work, authorship and ownership data**
- **Too many terms remaining undefined – not good for legal certainty**
- **A important need to widen reference to the Electronic Communications and Transactions Act 25 of 2002 beyond technical measures to as regards the safe harbour provisions and the rules governing data transactions. Almost all culture is digitized traded and paid for via data on the internet**
- **Including a “dramatic work” as a work eligible for copyright**

**Thank you**