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Ms Joanmarie Louise Fubbs  
Chairperson: Portfolio Committee on Trade and Industry  
PO Box 15  
Cape Town  
8000  
By email [jfubbs@parliament.gov.za](mailto:jfubbs@parliament.gov.za)

Dear Ms. Fubbs

**RE: MPA SA Submission relating to the Copyright Amendment Bill**

The MPA SA represents the interests of music publishers and by extension authors of musical work in South Africa and are members of the ICMP, the International Confederation of Music Publishers. The MPA SA recognizes the need to address the plight of South African composers and supports the objectives of government in this regard.

The organization advocates for copyright licensing regimes that encourage transparent and efficient practice in payment of royalties and that maximizes remuneration potential for copyright owners and therefore authors.

Unfortunately, the proposed Copyright Amendment Bill in many instances dilutes and reduces this potential by empowering users of copyright at the expense of copyright owners and authors.

There are many issues with the bill, some of which are covered in the submission by the **Copyright Alliance**, which the MPA SA supports. However, below are MPA SA's highlighted concerns.

Commissioned Work – The law should protect the first right of authors to own copyright to their work in the case of commissions. Should this not be the case, local authors of television and film music stand to lose significant royalties and an entire industry sub-sector will shrink in value, favouring the user over the creator.

Equal Sharing of Royalties – The bill proposes that user, performer, owner, producer, author shall have equal rights to claim royalties for all use of Music Work. This must be an error in drafting, as

copyright enshrines the right of authors and copyright owners to be remunerated by users for use of their works. Users pay a royalty for use of copyright and there can be no rationale for users effectively paying themselves for making use of another's property. Similarly, there can be no rationale for performers or authors claiming a share of royalties rightfully due to authors of musical work purely because they performed or produced the work.

Fair Use – MPA SA supports a fair dealing regime which is relevant for South Africa. Fair Use is relevant for an historically litigious society such as the U.S.A. South African creators and copyright owners are typically more financially disadvantaged than users of copyright and would thus struggle to protect their own interests over users' interests where users claim Fair Use. The net result is disempowerment of and less royalties for authors and copyright owners. Should the DTI wish to extend the scope of exceptions, it is therefore more appropriate to do so within the Fair Dealing regime.

Orphan Works – identifying copyright owners and authors is a process that unavoidably happens over time, but the bill does not allow for these processes. The effect will be such that orphan works that may have been identified within a reasonable period after reasonable efforts, will be practically inaccessible to users given the processes necessary to clear. An organization appropriately engaged in music copyright administration as their primary business should administer orphan works rather than a government department.

Temporary Copies – There should be no copyright exception for copies created as part of a data caching requirement in the case of music streaming. This would effectively cut copyright owners and authors off from the biggest growing revenue royalty source worldwide and locally and have the effect of shrinking author and owner earnings and significantly shrinking the value of music publishing in South Africa.

Term of Assignment – The Bill proposes that assignments may only be for a 25 year term (no more, no less). We believe this is a drafting error, but if passed this will obviously and seriously disadvantage authors. We believe the DTI should conduct proper research into current standard Music Publishing terms, including international and African norms, as this clearly has not been done. The Bill should rather look to extend the term of copyright from 50 years.

As a final and general comment, the MPA SA can only foresee the Music Publishing industry experience severe decline as a result of the amendments contemplated above. This can only mean a severe reduction in royalty earnings for authors, which contradicts the stated objectives of the DTI.

Yours truly,

A handwritten signature in black ink, appearing to be 'RH' with a long horizontal stroke extending to the right.

Ryan Hill  
Chair, Music Publishers Association of South Africa