

### Deliberations on the Copyright Amendment Bill: Issues referred to the sub-committee

Clause/Sections	Issues	Response	Decision
<b>Clause 2: Section 2A(1)(b)</b>	The question was raised why copyright does not subsist in computer programmes.	The department responded that interfaces are made available for free, and accordingly it cannot be made subject to copyright. Further explained that interfaces are not inventions, they are rather reformatting of already existing programmes therefore cannot be treated as original works.	It was explained in the PC that the introductory sentence must be read with paragraph (b), which then makes it clear that only "interface specifications" are excluded.
<b>Clause 2: (4)(b)(ii)</b>	Clarity was sought on the remedial actions when a person is misquoted.	The department responded that a person who feel strongly that they been misquoted should direct the concerns to the relevant bodies, for example, if a person has been misquoted in the newspaper the relevant body is the press ombud.	
<b>Clause 3: section 5</b>	On this clause the department in the past indicated that "funded by" must be removed.	The department highlighted that this clause was highly contested during the public hearing process and confirmed that the clause must be removed.	The sub-committee unanimously agreed that the whole close be removed and that section 5 of the principal Act should be retained.
<b>Clause 5: Section 6A</b>	The concern in this clause relate to the words "transfer" and "half", and the concern is in respect of contractual freedom.	<b>Transfer</b> - The department explained that the word this clause on "transfer" presupposes indicate that the rights of the author related to royalties stops when that the moment a person handed over the copyright to his/her work the right is gone. Because of this seeming anomaly in this case according to the department proposed that there is a need to relook at the term transfer "transfer" should be relooked at and the contractual freedom.	<b>Transfer</b> – the sub-committee decided that the department will propose another term/wording to be used instead of "transfer" because the term suggests that a person gives away all his/her right therefore would have no claim on the work after they have transferred it.

		<p>Adv van der Merwe pointed out that the word “transfer” is currently used in the Act in respect of the sale of copyright and that changing that word in this clause may nullify the intention of the clause. She will discuss with the Department to find a solution that can be presented to the PC.</p> <p><b>Half (50% split in royalties)</b> -- . In respect of the concerns around “half” of royalties and the impact of that on contractual freedom, a proposal was made that in order to protect artists, the first step should be the requirement of an agreement between the parties. If they cannot agree on the percentage share, the fall-back position should be 50%. The sub-committee indicated that there must be provision for a template in respect of the contract in the Bill. The sub-committee agreed with this proposal and agreed that provision must be made for a contract template in the Bill. Adv van der Merwe raised a concern that the solution of a fall-back percentage might result in no contract being concluded rather than being a measure to protect authors.</p>	<p><b>Half (50% split in royalties) -</b> The Sub-Committee agreed that this concern must be referred to the experts to assist the sub-committee with a method to protect authors. The sub-committee also requested feedback on the value chain involved here – i.e. who will be receiving the 50% share.</p>
<p><b>Clause 7 – Section 7B</b></p>	<p>There is a concern about whether the resale royalty right was not restricting contractual freedom.</p>	<p>The department proposed that the right should not be regarding all artistic works, but only visual arts such as paintings and sculptures. Adv van der Merwe alerted the sub-committee to the fact that this clause according to the Bill is not retrospective</p>	<p>The parliamentary legal advisor, Adv van der Merwe and the department were tasked to look on the constitutionality of a possible retrospective application and report back.</p>

		and will thus only apply to sales after the Act is operational.	
<b>Section 7B(3)(a)(i)</b>	A question was raised as to whether a person eligible for the resale royalty right even if that person is not legally residing legally in the country.	The department responded that an illegal activity cannot entitle a person to this right a person should first correct their status in order to be accommodated. A member cautioned on the importance of complying with the international law as well and take into consideration that some people are here in the country as refugees. There may be need to narrow exclusion.	The sub-committee agreed that the person should be legally resident, provided that the concern on international is taken into account.
<b>Section 7C(2) (b)</b>	Clarity given that IPPLA is not operational – possibly propose a transitional provision		The sub-committee agreed on the need for a transitional provision indicating that the terms and phrases used in this Bill that refer to the Intellectual Property Laws Amendment Act, 2013 (Act No. 28 of 2013) are subject to commencement of this Amendment Act.
<b>Clause 11: Section 9A((10)(aA)(i)</b>	This clause relate to the royalties regarding sound recordings. The concern raised here was in respect of the cumbersome process and rights given to broadcasters specifically to propose terms and conditions in		A proposal was made that standard terms & conditions should be effected and section should be worded properly. However, given that the whole process is so cumbersome, and as the real mischief here is the fact that broadcasters avoid paying royalties by not keeping

	respect of payment of royalties.		proper records, the sub-committee agreement that the experts should be asked to assist on a better process. The sub-committee requested feedback during the sub-committee meeting on 8 May 2018.
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