



## **National Assembly's Portfolio Committee on Trade & Industry**

**Public Hearings on the Copyright Amendment Bill & Performers Protection Amendment Bill**

**11 - 12 August 2021**

**Presenter: Stephen Hollis (Fellow of the SAIPL)**

- The South African Institute of Intellectual Property Law (SAIIPL) was established in 1952 and represents approximately 300 patent attorneys, patent agents, trade mark practitioners, copyright lawyers and academics in South Africa who specialise in the field of Intellectual Property Law.
- The members of SAIPL advise the majority of national and international businesses who have built their businesses on brands, innovation and technology and who protect their interests through our country's Intellectual Property laws.
- Members of the SAIPL often engage and participate at international conferences and events on Intellectual Property laws and related matters including events arranged by WIPO, LES, INTA, AIPPI, PTMY, FICPI, AIPLA, ITMA, MARQUES, etc.
- SAIPL participated in the August 2017 Parliamentary hearings that were held in respect of the Copyright Amendment Bill and we thank the Portfolio Committee for the opportunity to present during this consultation.

## New Media

Video games  
Software development  
Digital content and website  
development

## Traditional Cultural Expressions

Crafts, arts, dance, music,  
expressions of folklore

## Audiovisual

Production of feature films,  
tv, animation, documentaries,  
and broadcasting

## Performing Arts

Live performances in music,  
film, theatre

## Publishing and Print Media

Books, magazines, academic  
texts, scientific journals and  
other publications

# Creative Industries

## Architecture

Design, drawings,  
construction of buildings

## Advertising

Production of commercials,  
and other advertising  
materials

## Music

Recording, publishing,  
streaming

## Design

Graphic design, fashion,  
jewellery, watches and other  
products

## Arts and Crafts

Paintings, sculptures,  
photography, craftsmanship

## High-level legal review of the Bills

- Both Bills suffer from material flaws to which '*quick fixes*' cannot be applied by mere correction of wording.
- We identified **19 provisions, affecting up to 50% of the text introduced to the Copyright Act**, that may have constitutional implications or amount to treaty compliance issues.
- No proper legal assessment was done by the DTI to measure the Bills for compliance with the Constitution and international treaties.
- No adequate socio-economic impact assessment was conducted to measure the impact of the Bills on the creative industries and the sub-sectors therein.

***Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill***

CCT12/1999, 11 November 1999

*Judge Cameron:* “[18] There is however more to section 79 than only the President’s reservations. The provision envisages a series of steps, initiated by the President, in which Parliament is itself an active participant. The President can refer a Bill to this Court only after Parliament has unavailingly reconsidered it in the light of his reservations. The attitude of the National Assembly (or, where appropriate, Parliament) to the Bill’s constitutionality is therefore also a material factor in this Court’s determination, and it is for this reason that this Court’s rules permit all political parties represented in Parliament as of right to make written submissions relevant to the determination of the Bill’s constitutionality. It follows that in deciding on the Bill’s constitutionality the Court must consider the reservations of the President as well as any submissions relevant to them by any party represented in Parliament.”

## **The Institute's recommendations**

- Submissions in this consultation alone are not a sufficient basis for proper assessment of all legal questions.
- It is our recommendation for the National Assembly to engage independent Senior Counsel who are experienced in constitutional law and intellectual property for a comprehensive legal opinion on the issues identified in our written submission.

**We thank you for your attention.**