

**South African Institute of Intellectual Property Law submission  
to the  
National Council of Provinces and Provincial Legislatures  
on  
the Copyright Amendment Bill B 13D of 2017 and the Performers'  
Protection Amendment Bill B 24D of 2016**

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south african institute of intellectual property law

**Presented by Stephen Hollis**

# South African Institute of Intellectual Property Law submission to the National Council of Provinces and Provincial Legislatures



## Provisions of the Copyright Amendment Bill B 13D of 2017 commented on

at <https://saiipl.co.za/wp-content/uploads/2023/01/SAIPL-submission-Copyright-And-Performers-Protection-Amendment-Bill-January-2023.pdf>

Copyright owned by the State and “local organizations” designated by the Minister: Amendments to Sections 5(2), 21(2) and 22(1) of the Act and new Sections 6A(6)(c), 7A(6)(c) of the Act Clauses 3, 5, 7, 24(b) and 25(a) of the Bill	Ownership of copyright in commissioned works: Amendments to Section 21 of the Act Clause 24 of the Bill
The qualification of the new distribution right by exhaustion: New Section 12B(6) of the Act Clause 15 of the Bill	Unenforceable contract terms: New Section 39B of the Act and new definition of “open licence” Clauses 36 and 1(i) of the Bill
New statutory royalty entitlements for authors of literary, musical and visual artistic works, and for performers whose performances are fixed in audiovisual works: New Sections 6A, 7A, 8A and 9A(1)(aA) of the Act Clauses 5, 7, 9 and 11 of the Bill	25-year limit on the term of assignments of copyright in literary and musical works: Amendment of Section 22(3) of the Act Clause 25(b) of the Bill
Technological Protection Measures and Copyright Management Information: New Sections 27(5)B, 28O, 28P, 28R and 28S and new definitions of “technological protection measure”, “technological protection measure circumvention device or service” and “copyright management information” in the Act Clauses 1, 29 and 31 of the Bill	Minister’s powers to set compulsory standard contract terms and royalty rates and tariffs: Amendments to Section 39 of the Act. Clauses 35 and 36 of the Bill

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### Provisions of the Copyright Amendment Bill B 13D of 2017 commented on (continued)

Copyright exceptions and 'fair use': New Sections 2A(1), 12A, 12B, 12C, 12D, 19B, and 19C of the Act and amendment of Section 15 of the Act Clauses 2, 15, 16, 21 and 22 of the Bill	Copyright exceptions - Persons with a disability: New Section 19D of the Act and new definitions for "accessible format copy" and "person with disability" in Section 1 of the Act Clauses 1 and 22 of the Bill
Parallel imports: Amendments to Section 28 of the Act Clause 30 of the Bill	Statutory licences for reproduction and translation: New Schedule 2 of the Act, amendment to Section 22(3) of the Act Clauses 25 and 37 of the Bill
Resale royalty right: New Sections 7B-7F of the Act, new Section 39(cl) of the Act, new definitions of "art market professional", "visual artistic work" in Section 1 of the Act Clauses 7, 35 and 1(b) and (l) of the Bill	Orphan Works: New Section 22A and new definition of "orphan work" in the Act. Clauses 26 and 1(i) of the Bill
Replacement of defined term "cinematograph film" with "audiovisual work": Clauses 38 and 1(b) of the Bill	Intellectual Property Laws Amendment Act, 2013: Clause 39 of the Bill
Disproportionality of new criminal sanctions: New Sections 8A(6), 9A(4), 22C(4) and Section 27(6) and (9)(a) of the Act Clauses 9, 11, 27 and 29 of the Bill	Tribunal: Substitution of Section 29, new Sections 29A to 29H of the Act, and repeal of Sections 30, 31, 32, and 33 of the Act Clauses 32, 33 and 34 of the Bill

## 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

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### **SAIPL recommendations:**

The Bills be rejected and that they be allowed to lapse in Parliament.

Revision of the Acts in two stages:

First stage: Amend the Copyright Act in limited respects and replace the Performers' Protection Act. Could be done swiftly.

1. Amendments to the Copyright Act following the recommendations of the Copyright Review Commission and to introduce amendments to align the Act with WCT and the Marrakesh Treaty.
2. Urgent need for exceptions for the reproduction right for the benefit of educational institutions and libraries having a public character can be introduced by regulation.
3. A new Performers' Protection Amendment Bill aligned with WPPT and the Beijing Treaty, and grants legal protection to indigenous performances and performers of indigenous works.

Second stage: In-depth revision of the Copyright Act, possible replacement of the current Act.

**We thank you for your attention.**