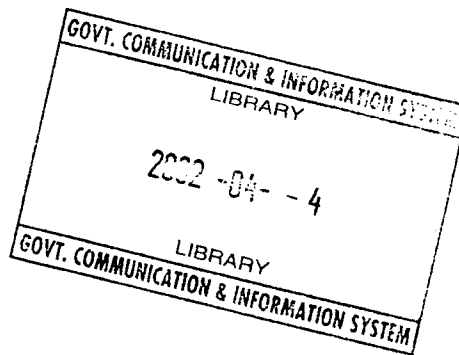


REPUBLIC OF SOUTH AFRICA

COPYRIGHT AMENDMENT BILL

(As amended by the Portfolio Committee on Trade and Industry (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF TRADE AND INDUSTRY)



[B 73D—2001]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Copyright Act, 1978, so as to define an expression and to amend a definition; and to make further provision regarding the nature of copyright in sound recordings; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 98 of 1978, as amended by section 1 of Act 56 of 1980, section 1 of Act 66 of 1983, section 1 of Act 52 of 1984, section 1 of Act 13 of 1988, section 1 of Act 125 of 1992 and section 50 of Act 38 of 1997 5

1. Section 1 of the Copyright Act, 1978 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion in subsection (1) after the definition of “cinematograph film” of the following definition:
“ ‘collecting society’ means a collecting society established under this Act;” and 10
- (b) by the substitution in subsection (1) for the definition of “Minister” of the following definition:
“ ‘Minister’ means the Minister of [Economic Affairs] Trade and [Technology] Industry;”. 15

Substitution of section 9 of Act 98 of 1978, as substituted by section 6 of Act 56 of 1980 and amended by section 7 of Act 52 of 1984 and section 2 of Act 61 of 1989

2. The following section is hereby substituted for section 9 of the principal Act:

“Nature of copyright in sound recordings

9. Copyright in a sound recording vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic: 20
- (a) Making, directly or indirectly, a record embodying the sound recording;
- (b) letting, or offering or exposing for hire by way of trade, directly or indirectly, a reproduction of the sound recording; 25

- (c) broadcasting the sound recording;
 (d) causing the sound recording to be transmitted in a diffusion service, unless that service transmits a lawful broadcast, including the sound recording, and is operated by the original broadcaster;
 (e) communicating the sound recording to the public." 5

Insertion of section 9A in Act 98 of 1978

3. The following section is hereby inserted in the principal Act after section 9:

"Royalties

- 9A.** (1) (a) In the absence of an agreement to the contrary, no person may broadcast, cause the transmission of or play a sound recording as contemplated in section 9(c), (d) or (e) without payment of a royalty to the owner of the relevant copyright. 10
- (b) The amount of any royalty contemplated in paragraph (a) shall be determined by an agreement between the user of the sound recording, the performer and the owner of the copyright, or between their representative collecting societies. 15
- (c) In the absence of an agreement contemplated in paragraph (b), the user, performer or owner may refer the matter to the Copyright Tribunal referred to in section 29(1) or they may agree to refer the matter for arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965). 20
- (2) (a) The owner of the copyright who receives payment of a royalty in terms of this section shall share such royalty with any performer whose performance is featured on the sound recording in question and who would have been entitled to receive a royalty in that regard as contemplated in section 5 of the Performers' Protection Act, 1967 (Act No. 11 of 1967). 25
- (b) The performer's share of the royalty shall be determined by an agreement between the performer and the owner of copyright, or between their representative collecting societies.
- (c) In the absence of an agreement contemplated in paragraph (b), the performer or owner may refer the matter to the Copyright Tribunal referred to in section 29(1), or they may agree to refer the matter for arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965). 30
- (d) Any payment made by the user of the sound recording in terms of this subsection shall be deemed to have discharged any obligation which that user might have to make any payment in respect of his or her use of a corresponding fixation in terms of section 5 of the Performers' Protection Act, 1967 (Act No. 11 of 1967). 35
- (3) In the event of any right to a royalty being assigned to any successor in title, either by contractual arrangement, operation of law, testamentary disposition or otherwise, any successor in title shall be entitled to enforce such right to a royalty against the person who in terms of this section is obliged to pay or against his or her successor in title." 40

Amendment of section 39 of Act 98 of 1978

4. Section 39 of the principal Act is hereby amended by the insertion after paragraph (c) of the following paragraph:

- "(cA) in consultation with the Minister of Finance, providing for the establishment, composition, funding and functions of collecting societies contemplated in section 9A, and any other matter that it may be necessary or expedient to regulate for the proper functioning of such societies;" 45

Short title

5. This Act is called the Copyright Amendment Act, 2001.

**MEMORANDUM ON THE OBJECTS OF THE COPYRIGHT
AMENDMENT BILL, 2001**

1. The Copyright Act, 1978 (Act No. 98 of 1978) ("the Act"), confers certain rights on copyright owners, but fails to specify who is entitled to ephemeral copies and related royalties of work that is subject to copyright. This is referred to as "pay for play time", i.e. whenever a record is played by a broadcaster, there should be an accompanying royalty payment to the owner of the rights.

2. The Act also fails to address the management of the payment of royalties and as a result non-statutory associations or collecting societies are formed to regulate agreements or contracts on behalf of copyright owners. Unfortunately these agreements are often disproportionately in favour of broadcasters and recording companies, thus resulting in local performing artists being unfairly disadvantaged by such agreements.

3. Performing artists have made representations in respect of royalties related to the "pay for play time" for the past six years and have requested that such royalties be paid to copyright owners.

4. Consultations with stakeholders within the music industry have taken place and consensus was reached amongst stakeholders that the issue of royalties should be addressed by means of amending the Act as well as the Performers' Protection Act, 1967 (Act No. 11 of 1967).

5. It was agreed that for the rights of copyright owners to be exercisable, statutory bodies (collecting societies) need to be formed in order to collectively bargain with broadcasters in the collection of royalties. It is envisaged that the collective bargaining powers of such bodies will equalise the relationship between performers and consumers of their material (broadcasters and recording companies). In the event of a failure to reach agreement through the collective bargaining process, any of the parties concerned may refer the matter to the Copyright Tribunal or, if all the parties agree, refer the matter for arbitration.

6. The Bill seeks to amend the Act in order to give effect to the abovementioned proposals and also seeks to enable the Minister to provide for the establishment of collecting societies.

7. Financial implications for State

None.

8. Consultation

The following persons and bodies were consulted:

- * Department of Arts, Culture, Science and Technology.
- * South African Broadcasting Corporation.
- * South African Musicians Union (Samu).
- * Non-members of Samu.
- * Association of South African Music Industry (Asami).
- * South African Music Rights Organisation (Samro).
- * The Standing Advisory Committee on Intellectual Property Rights.
- * The Music Industry Task Team.
- * National Association of Broadcasters.

9. Parliamentary Procedure

The State Law Advisers and the Department of Trade and Industry are of the opinion that the Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution since it does not contain any provision to which the procedure set out in section 74 or 76 applies.