



Jean-Luc DEMARTY
Director General
DG Trade

European Commission
Rue de la Loi 170
BE – 1049 Brussels

Brussels, 15 March 2019

Re: Industry attempts to sway key copyright reform in South Africa

Dear Mr. Demarty,

The International Federation of Actors (FIA), the International Federation of Musicians (FIM) and UNI – Media, Entertainment & Arts (UNI MEI) are the representative global trade union federations for workers in the media and entertainment sector, including audio and audiovisual performers, authors and co-authors. Together, they speak for hundreds of thousands of professional creative workers in the audio and audiovisual industries worldwide.

We are writing to you as it has become apparent that several international industry federations have pleaded your support to press the South African government to delay the approval of a much-needed copyright reform, including vital provisions to enhance the livelihood of performers and authors. We want you to know that we strongly disapprove of this initiative.

The current copyright framework in South Africa dates back to the early '70s, before the VCR was even invented, and its revision is thus overdue. It is also much needed to enable South Africa to fully comply with international standards, including the WIPO Internet treaties and the WIPO Beijing Treaty on the Protection of audiovisual Performances. Creative workers in South Africa have been battling for a long time to seek meaningful moral and economic rights to protect their image and to earn an honest return from the commercial exploitation of their work. They have also been calling for a rigorous collective management reform to end years of fraudulent management practices.

Without proper protection and the ability to collectively negotiate minimum rates as independent contractors, the only "contractual freedom" enjoyed by creative workers in South Africa is to sign biased contracts, unilaterally drafted by the industry and entailing a complete buy-out of all their future economic entitlements, or not to sign them. Performers and other creative workers in South Africa have been subsidizing the industry for far too long. The overwhelming majority of them live a very precarious life.

The current copyright review in South Africa, comprising a Copyright Amendment Bill and a revision of the Performers Protection Act, will provide creative workers greater certainty and bargaining power in dealings with producers, labels, publishers and other industry employers as well as CMOs.

The new legislation establishes standard minimum requirements on royalty rates and contractual terms to protect the weaker party whilst leaving intact the ability of the parties to negotiate for reasonable terms. Opponents of the legislation point to the reversionary clause that limits copyright assignments to 25 years. This is however in line

with international standards and the EU *acquis* has resorted to mechanisms of a similar nature to limit abusive practices to the detriment of creative workers. This is, for instance, the case in directive 2011/77/EU on the term of protection of copyright and may soon also be one of the positive outcomes of the draft Directive on Copyright in the Digital Single Market, already approved at trilogue and awaiting the final endorsement of the European Parliament.

In accord with the WIPO Beijing Treaty on the Protection of Audiovisual Performances, these draft bills also guarantee a royalty share to performers engaged as independent contractors. Performers the world over deserve residual income from the ongoing exploitation and success of their performances, much as musicians and vocalists whose protection was improperly addressed up until now in South Africa and who will finally also see the benefits of a modern copyright framework. The draft Directive on Copyright in the Digital Single Market also establishes the fundamental principle that the remuneration of performers and authors must be appropriate and proportionate. It would be incongruous for the Commission to take a different stand in foreign policy.

It is shocking, albeit not surprising, to note that among the many signatories of the letter addressed to you on February 18, 2019, are many of those same organizations that have been fighting for a meaningful provision in the EU copyright revision process addressing the "value gap", arguing at great length how such provision would be to the benefit of artists and creators. Yet, the South African bills they are opposing attempt, among other things, to make sure that creative artists may get an honest share of the profits made from the exploitation of their works and performances. Clearly, addressing the value gap is meant for the sole benefit of the corporate industry, with no desire to offer creative workers a reasonable share of those profits.

Despite the scare tactics of some of those trying to disrupt the South African Government's consideration of this legislation, the bill does not undermine anti-piracy protections and, in fact, further codifies technological protection measures and criminal sanctions for those who try to illegally circumvent them. Provisions on exceptions and limitations are also compliant with international standards and properly framed.

Several impact assessment studies have already been conducted on both bills and both acts have reached a very advanced state in the negotiation, after years of expert meetings and public hearings involving all South African stakeholders that understand the unique circumstances of the South African industry and marketplace.

It is our firm conviction that the modernization of the South African copyright legal framework, as brought forth by these measures, will help move towards an acceptable playing field for creative workers and provide crucial support for South Africa's creative economy by fostering an environment that can sustain professional creative careers. This is crucially lacking in South Africa, where so many artists end their days in poverty and the industry, especially in the audiovisual sector, heavily relies on foreign investment.

For all these reasons, we urge you, in the strongest possible terms, to decline involving the European Commission by expressing an opinion on this domestic legislation pending before the legislature of South Africa.

Yours truly,


Dominick Luquer
General Secretary of FIA
dluquer&fia-actors.com


Benoît Machuel
General Secretary of FIM
benoit.machuel@fim-musicians.org


Johannes Studinger
Head of UNI MEI
Johannes.studinger@uniglobalunion.org

CC: *Ms. Cecilia Malmström, Commissioner, European Commission, DG Trade*
Mr. Edwin Makue, Chairperson, Committee on Trade and International Relations, Parliament of South Africa
Mr. Lionel October, Director General, Department of Trade and Industry of South Africa
Mr. Rory Voller, Commissioner, Companies and Intellectual Property Commission of South Africa
Ms. Joan Fubbs, Chairperson, DTI Portfolio Committee, Parliament of South Africa
Dr. Mashilo Boloka, Director General, Department of Communications, Government of South Africa
Mr. Vusumusi Mkhize, Director General, Department of Arts and Culture, Government of South Africa
Ms. Thandi Modise, Chairperson, national Council of Provinces, South Africa