

Is SA heading for a copyright calamity?

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26 Apr 2023

South Africa's Copyright Amendment Bill and Performers Protection Amendment Bill could potentially harm rather than help the creative industry and needs serious reconsideration.



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Copyright serves two broad functions in society. It reassures business and investors that the works they commission, licence and invest in, are protected and can be commercialised. It also ensures that the artists, authors, programmers, composers, and musicians who create the works are fairly and properly compensated.

These are not competing functions. They are two sides of the same coin. Without investment, creators cannot commercialise their work and earn an income. Without happy and incentivised creators, businesses cannot acquire unique content to sell and attract consumers.

With this in mind, governments and their legislatures are eager to create copyright laws that balance the interests of both businesses and creators. It makes good business sense, and good economic sense. As the global economy embraces digitalisation in every sphere of business, governments, including South Africa's, are racing to adapt copyright to co-exist with the digital future. This is reflected in South Africa's Copyright Amendment Bill No. B13D of 2017 and the Performers Protection Amendment Bill No. B24D of 2016.

With these two bills, government seeks to take South African copyright boldly into the future, while giving creators a larger slice of the pie. These are laudable objectives. Unfortunately, although they attempt to grant creators more rights (including statutorily-mandated royalties), the bills will inadvertently limit their rights, including by restricting them from freely contracting with businesses on terms that are commercially favourable and aligned with international norms. In turn, the legal risk of working with South African creators will increase. Already [Netflix has expressed concern](#) that some of the proposals in the two bills will harm the stakeholders that government is trying to protect.

What the bills have not considered is that companies will merely move their business and investment to countries that

provide the best competitive advantage for copyright protection. Accordingly, creators from all industries in South Africa will struggle to find partners willing to commercialise their work. This could have two possible impacts. It will either leave creators without a source of income, or it will leave South Africa without creators. Either way, South Africa will lose investment and economic growth as well as the opportunity to cultivate more abundant creative and digital industries.

While there is some speculation that the bills will be passed during 2023, there is no doubt that South Africa's creative and digital industries will benefit more if the bills are reconsidered and amended, rather than passed into law in their current form.

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