



Submission - South African Copyright Act Changes 2017

South African Guild of Editors

A non-profit organisation, #2007/006516/08

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7 July 2017

Ms J Fubbs
Chairperson: Portfolio Committee on Trade and Industry
Attention Mr A Hermans
Parliament of the Republic of South Africa
Cape Town

By email to: ahermans@parliament.gov.za

Dear Ms Fubbs,

I am writing on behalf of the South African Guild of Editors (SAGE) and would like to thank the Portfolio Committee's invitation to submit formal comments on the draft Copyright Amendment Bill.

SAGE is a key stakeholder in the film and television industry as the only representative body of Editors, Sound Designers and other post-production professionals in South Africa. SAGE has been in existence for over 20 years and aims to promote the Art of Editing, while representing post-production professionals. As a voluntary organisation, we do not have the resources to deliver a detailed analysis of the draft prepared by DTI, but wish to put forward some thoughts for consideration.

1. The vast majority of Editors are freelancers,¹ under contractual— though often informal—terms imposed by producers and/or broadcasters. This puts post-production professionals in a fragile and weak negotiating position. The “old commissioning clause” [21(1)(c)] has given the public broadcaster SABC automatic ownership of copyright and all ancillary rights in a commissioned film or TV programme in the past. Not only is this widely regarded as obsolete, it prevents our local independent production and distribution companies from fully exploiting secondary and ancillary rights, which in turn limits the remuneration and affects the timeframes in which the professionals working on these productions are expected deliver quality results. The new article proposes to leave this matter to the private contract, however, SAGE feels this provision is entirely insufficient as it ignores the fact that SABC and other public corporations have considerable bargaining power over independent producers using the clause to effectively continue to confiscate all rights other than those needed to operate a primary broadcast license. SAGE urges the Portfolio Committee to amend this article in such a way that a genuine level playing field may exist for all in the content creation value chain.

2. In addition, the Editor's creative input is often overlooked. Within the South African context the Editor is often left to work on their own within a limited timeframe and with limited involvement from the Director and/or Producer. This puts a sizable amount of additional responsibility on the Editor to solve creative challenges that would normally be shared

¹ The classification of Editors is controversial for a number of Reasons: Editors often work from the offices and on the equipment of Production Companies, working for more than 40 hours a week.

between a Director and Editor. Filmmaking is a collaborative process and therefore the creative input from the different individuals varies. Some creative roles may influence the entire content, for example the Director directs the entire production. However, the Editor's creative value is evident and significant, and will often play a critical role in shaping the visual narrative and storytelling of a production. For example, an Editor on a documentary may receive a writing or co-directing credit because of their creative contribution to the production. It is this influence that guides a Director and/or Producer to work with a particular Editor and/or Sound Designer, and should therefore also guarantee satisfactory remuneration and working conditions. Instead the industry finds itself lacking sufficient skilled post-production professionals and struggling to keep existing post-production professionals in the industry². In contrast, several European countries³ recognise the Editor's creative input in the creation of a production to be substantial and therefore consider the Editor to be a rightsholder. Countries such as The Netherlands, Germany, Switzerland, Austria, Romania, Hungary, Czech Republic, Poland, Estonia, Finland and Sweden recognise the "Director, Screenwriter, Composer & some technicians⁴ either by law or contract" as rightsholders.⁵ There is no single model. The limitations on these rights vary from country to country⁶ and are determined by the national context, the individual contracts signed, collective strength and national legislation. Some national legislations specifically identify the individuals who should be considered authors (rightsholders) whilst others do not provide for a hard and fast definition but remain open to any collaborator who can demonstrate an "original, creative contribution". Germany, Austria and Hungary, Switzerland,⁷ Norway⁸ and Poland⁹ consider every person who contributes to the creative making of a film an author (rightsholder) of the production (These rights are not limited to particular formats or forms of exploitation).

- Austria¹⁰ uses a flat percentage rate according to occupational groups to distribute funds collected on behalf of filmmakers. The percentage rate for Editors is 14%.

² These conditions are also determined by a constant pressure to reduce budgets, which no longer allow for proper assistant editors in the work place. Instead assistant editors now work in isolation of editors, often at night, without the proper skills transfer between editors and their assistant editors, reducing an opportunity for an organic transformation process.

³ At the time of compiling this document SAGE had received responses from some European countries and were waiting for responses from countries in other territories.

⁴ A person skilled in the technique of an art or craft.

⁵ Society of Audiovisual Authors (SAA) White Paper 2015 Page 13

⁶ There is no clear European ruling. Article 2 states:

1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.

2. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last surviving of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

⁷ Email correspondence with Verwertungsgesellschaft Der Filmschaffenden (VDFS) Collecting Society for filmmakers (Austria).

⁸ Email correspondence with Screen Craft Rights (England and Wales).

⁹ Email correspondence with Bild-Kunst (Germany).

¹⁰ Verwertungsgesellschaft Der Filmschaffenden (VDFS) Collecting Society for filmmakers (Austria) distribution rules Page 2



- Finland¹¹ uses a sliding scale determined by the “amount of creative input” for individual rightsholders for the various types of production. The percentage rate for Editors ranges between 2% (Talk shows and magazine programmes) and 10% (documentaries). The Sound Designer is also recognised across several types of production at 2%.

Editors and Sound Designers make a valuable creative contribution to a production, that can vary from genre to genre: from fiction to non-fiction; from a film for cinema to an episodic drama series; from animation to video games. The success of these types of productions depends on the creative talent and contribution the Editor and Sound Designer brings to the collaborative process. As a result SAGE advocates for the recognition of the Editors and Sound Designers’ contributions to the filmmaking process as necessary rightsholders.

SAGE trusts that this in-depth information, illustrates the precarious nature of the film industry, in which we as post-production professionals operate. We hope this information assists the portfolio committee in making more holistic decisions regarding the copyright amendment bill that are of benefit to the professionals who service the film industry, assisting them to improve their marginalised economic position as Editors and Sound Designers and acknowledge them as rightsholders in the South African film and television industry.

We remain at your disposal should you wish to discuss specific amendments with SAGE in the near future.

Best regards,

Melissa Parry

Vice-Chairperson: South African Guild of Editors

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¹¹ KOPIOSTO Copyright Society (Finland) distribution guide 2013