**Issues for the Committee’s consideration regarding the remitted Copyright and Performers’ Protection Amendment Bills**

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| **President’s reservations** | **CLSO recommendations** | **ANC position** | **DA position** | **Committee decision** |
| Tagging: the Bills should have been classified as section 76 Bills (“trade” and “cultural matters”) | Both Bills were correctly classified as section 75 Bills. The Committee may however decide to err on the side of caution and recommend a reclassification of section 76 to the JTM | The ANC agrees with the President that the Bill be re-tagged as a Section 76 Bill. The ANC errs on the side of caution by referring this matter to the Joint Tagging Mechanism to validate the view of the ANC. | The DA believes that the bill should be tagged as a Section 76 Bill and should be done as such to allow Provinces and interested parties to comment as such. | EFF – agrees  ACDP – agrees |
| Retrospective and arbitrary deprivations of property – Clauses 5, 7 and 9 inserting sections 6A(7), 7A(7) and 8A(5) into the Copyright AB. | Amend these clauses to provide for prospective operation only | * The ANC agrees with the President’s reservation; therefore, the sub-clauses should be deleted * The ANC recommends the possible introduction of compensation for those exploited in the past. The Minister must consult with the Treasury on bringing a fresh Bill to the Committee to introduce a levy to address (compensate) the exploitation of the past (in the future). * The PC may request the Executive to identify possible mechanisms (options) to compensate artists or performers who were exploited in the past (within 6-12 months) | Agree with the President’s view | ACDP – agree  EFF – agree and should consider a levy |
| Impermissible delegation of legislative power to the Minister – Again Clauses 5, 7 and 9 of the Copyright AB. | If the clauses are amended as recommended above – this reservation is automatically dealt with. If the clauses are retained, the delegations need not be amended. | The ANC is of the view that delegation of powers to the Executive is a norm in our laws, however this clause on delegation of powers to the Executive automatically falls away with the deletion of the Retrospectivity clause as they are linked. | Agree with the President on the impermissible delegation of legislative power. | EFF – agree  ACDP – agree |
| Lack of public participation related to fair use. | There was sufficient public involvement on whether to use “fair use”. However, Parliament has significant discretion in respect of the facilitation of public involvement (S59 of the Constitution) - may request further submissions from the public. | The ANC agrees with the President’s reservation; therefore, the fair use clause (section 12A) should be reopened for public comment. | It is obvious and clear that there was a lack of public participation and should be reopened. | EFF – agree  ACDP – agree |
| The copyright exceptions – some clauses may:   * Constitute arbitrary deprivation of property; * Affect the right to freedom of trade, occupation and profession. | The copyright exceptions are not arbitrary deprivation, do not limit the right to choose a trade, occupation or profession and comply with the three step test. | The ANC is of the view that the exceptions should be retained. The copyright exceptions do not constitute arbitrary deprivation of property, do not limit the right to choose a trade, occupation or profession and are not in breach of the three-step test. However, the ANC is of the view that the Committee should err on the side of caution with regard to the three-step test and open these sections for public comment as part of the fair use clauses.  Clauses to be affected are:  Clause 13 [inserting sections 12A, 12B(1)(a)(i), 12B(1)(c), 12B(1)(e)(i), 12B(1)(f), 12C and 12D], clause 19 [inserting section 19B] and clause 20 [inserting sections 19C(3), 19C(4), 19C(5)(b) and 19C(9)] | Agree with the President’s concerns regarding arbitrary deprivation and affect freedom to trade. Should be amended as such. | EFF – agree  ACDP – agree with erring on side of caution |
| Do the Bills comply with International Treaty Implications? | This reservation should not be considered as it falls outside section 79(1). However, the Committee may decide to reconsider the remitted Bills in respect of compliance with the treaties and make any amendments it deems necessary. | The view of the ANC is that there was a serious consideration of alignment between international treaties and the contents of the Bills, in the process of the amendments of the Bills.  In appreciation of the President's reservation and a conscious preference to err on the side of caution, we hold a view that a reasonable balance and alignment with the provisions of section 231 and 233 of the Constitution of the Republic must be thoroughly interrogated. This view must also form part of the areas to be dealt with through oral and written submissions arising from further engagement and participation of the public. | Disagree that it complies | EFF – No comment  ACDP – agree that there is a challenge with compliance |