



EUROPEAN UNION
DELEGATION TO THE REPUBLIC OF SOUTH AFRICA

AMBASSADOR

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Dr Cassius Reginald Lubisi
Director General
The Presidency

Subject: Copyright Regime

Dear Director General,

On behalf of the European Commission, I would like to congratulate the South African Government for its commitment to revise the current copyright regime in order to modernise it with a view to complying with relevant international conventions and treaties. Updating the substantive copyright laws, in order to bring them in line with these treaties, is a very important step. We trust that the next one will be the ratification of these conventions and treaties by South Africa. I would also like to reiterate the support of the European Commission for introducing in the Draft Copyright Bill “the making available right”, which is key for right holders making use of their creations in the digital era and the resale right for artistic works, which ensures that artists have a share in the economic success of their art.

The European Commission has participated continuously throughout the public consultation process which began in 2015 and culminated in March 2019 with the final Copyright Bill being sent to the President for assent. In particular, by addressing its contributions on 16 September 2015 to Mr. Lionel October, Director General of the Department of Trade and industry, and on 22 February 2019 to the Hon. E. Makue Chairperson of the Select Committee on Trade and Industry Relations.

The European Commission, while appreciating efforts in clarifying various aspects in its successive drafts, remains concerned about the overall coherence of the current Bill. In particular, we once again regret the foreseen introduction in the South African copyright regime of provisions relating to fair use in combination with an extensive list of broadly defined and non-compensated exceptions. This is bound to result in a significant degree of legal uncertainty with negative effects on the South African creative community at large as well as on foreign investments, including the European ones.

The European right holders continue expressing their concerns to us in this regard as they have done during the consultation period. All creative sectors in the EU, film industry, music and publishing industry have pointed to the possibility of revisiting their investment plans in South Africa due to these concerns. Other sectors, such as those which are high-



technology based, could also suffer as a result of legal uncertainty created by the new regime.

This significant departure from the level of protection of copyrighted protected works, contrary to the international standards in force in most of countries, is therefore likely to result in non-negligible effects for the South African economy.

We humbly question whether it may not be opportune to defer the adoption of this reform, possibly by engaging in a process which would more closely anchor the South African copyright regime to the international conventions and treaties.

The European Union remains available for any further exchanges or assistance on the above matters. I would be personally delighted to meet with you at the earliest opportunity for further exchanges on this matter and on the wider EU-South Africa agenda.

Yours sincerely,



Riina Kionka

c.c: Ms Trudy Makhaya Economic Advisor to the President
Amb Mpendulo Jele, Chief Director DIRCO
Ms Niki Kruger, Chief Director DTI