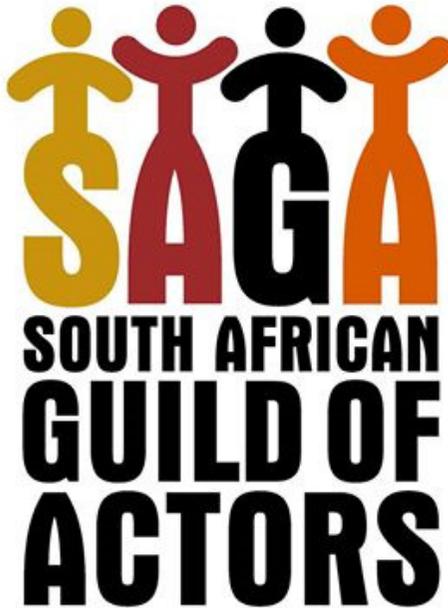
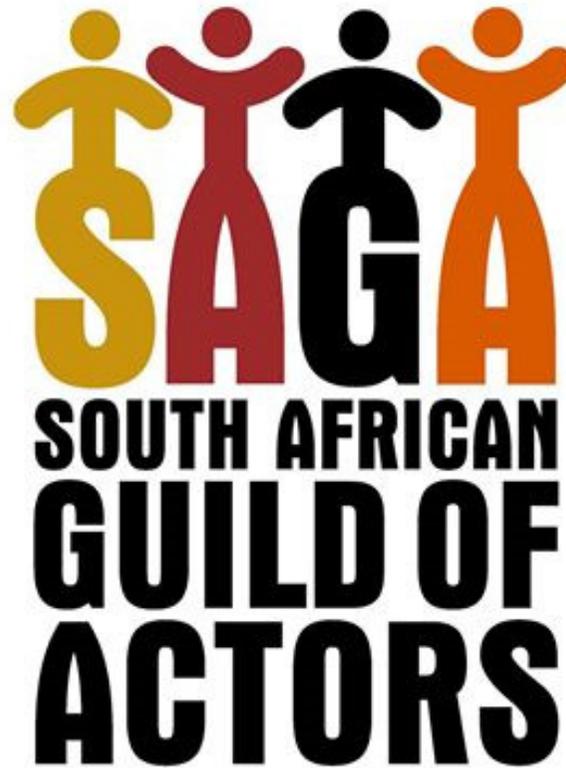


SAGA PRESENTATION COPYRIGHT AMENDMENT BILL



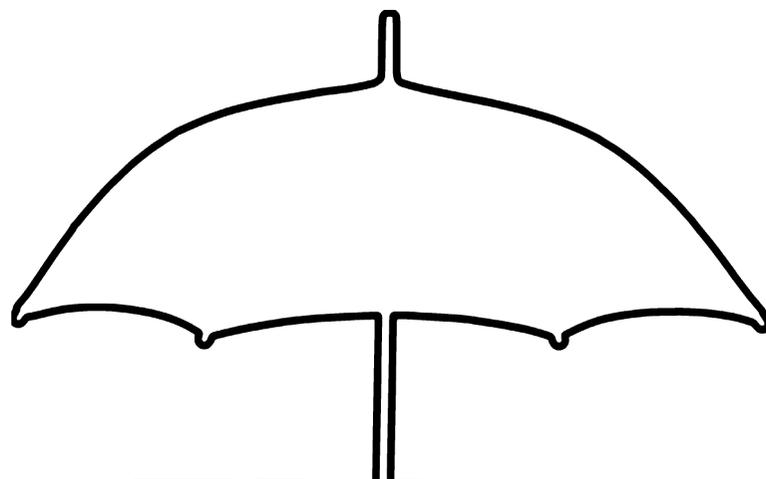
Friday 4 August 2017



SAGA is a non-profit organization (NPO number 119-128 NPO) constituted on 23 July 2009

SAGA has been a member of the South African Screen Federation (SASFED) since 2009

SAGA is one of 68 countries elected as a member of the International Actors Federation (FIA) in 2012



FIA 
INTERNATIONAL FEDERATION OF ACTORS
FEDERATION INTERNATIONALE DES ACTEURS



National Development Plan

This plan envisions a South Africa where everyone feels free yet bound to others;

where everyone embraces their full potential,

a country where opportunity is determined not by birth, but by ability, education and hard work.

Realising such a society will require transformation of the economy and focused efforts to build the country's capabilities.

To eliminate poverty and reduce inequality, the economy must grow faster and in ways that benefit all South Africans.



Differences: Independent Contractor vs Employee

<u>FREELANCER / INDEPENDENT CONTRACTOR</u>	<u>EMPLOYEE</u>
CONTRACTING PARTY / PRODUCER	EMPLOYER
ANNUAL CONTRACT FEES – PAID MONTHLY PAID PER CALL/WEEK/JOB	MONTHLY SALARY
PROTECTED BY CONTRACT TERMS – MAY NOT EMBARK ON STRIKE ACTION	PROTECTED BY LABOUR LAW – MAY EMBARK ON STRIKE ACTION
SARS – MAY DEDUCT CERTAIN EXPENSES INCURRED IN PURSUIT OF INCOME (RENT/TELEPHONE/WARDROBE/TRANSPORT) TAX CODE: 3616	ONLY DEDUCTIONS ALLOWED ARE MEDICAL EXPENSES, RETIREMENT ANNUITY CONTRIBUTIONS TAX CODE: 3601
WORK FOR MANY COMPANIES IN A YEAR	ONLY WORK FOR ONE EMPLOYER
DOES NOT NEED TO GET CONSENT TO ENGAGE IN OTHER (MULTIPLE) CONTRACTS	MAY NOT WORK FOR ANY OTHER EMPLOYER



MNET CONTRACT

3 Complete consideration / Buy - out

3.1 The Performer acknowledges and agrees that the consideration payable to the Performer by the Producer constitutes the **full, complete and sufficient** consideration in respect of the rendering of the services by the Performer and **the grant of any and all rights by the Performer** under the Performer Agreement, and include:

- 3.1.1 the Performer's participation in any money received by M-Net, or profits related to the Series or the exploitation thereof which may accrue to M-Net; and
- 3.1.2 any repeat or residual fees of any nature whatsoever in respect of the services rendered by the Performer in terms of the Performer Agreement; and
- 3.1.3 You hereby acknowledge and agree that the services fees referred to represents a reasonable, full and final consideration for the Contribution and all other services rendered under this agreement having regard to the rights granted to M-Net in term of this agreement including, without limitation, the full copyright in relation to your Contribution to the Programme. Accordingly, the Performer agrees that M-Net shall not pay the Performer any further fees or royalties in connection to the Contribution to the Programme including, without limitation, when the Programme is rebroadcast or exploited in any other form of media either by M-Net itself or any of its third party licences.



Irregular Clauses

ANNUAL NEW MEDIA CALLS

Salaried (permanent) Artists will be required to perform, at no fee, and 4 (four) New Media Calls annually on the production's or SABC designated sites. These will be defined in detail but are essentially:

- Communicating to the public via a written new media (facebook, website, twitter etc not Skype) for a maximum period of two hours per call. Artists will be representing themselves, not the character they play.
- Any representation of the character (not the Artists) on new media will be executed by the production's in-house writer, however the artists may, by mutual agreement volunteer to be involved with the writer at no charge.
- Additional calls, over the 3 (three) obligatory calls, will be treated as a half acting call and added to the annual total.

PRODUCT PALACEMENT, TRADE EXCHANGES, BRAND ASSOCIATION

- Within the programme (on screen) this is obligatory and revenue goes to SABC 1
- In the event that an artist, or the Artist's likeness, is used to market a production outside the show (eg. In store), even if linked to the show and set up by SABC Airtime sales, then the Artists will be paid for this by the product concerned. This fee negotiation, per deal, may be facilitated by the SABC or Producer, however the decision will rest finally with the Artist and his/her agent.
- If a product is created for the sale that uses their image or likeness of the Artist, the Artist will be paid fees to negotiate per deal



FEATURE FILM CONTRACT - MOONLIGHTING

USE OF MATERIAL AND ASSIGNMENT OF RIGHTS

* Ownership: All results and proceeds of every kind of the services heretofore and hereafter to be rendered by the Artist in connection with the Film, including without limitation the Artists' performance and all ideas, suggestions, themes, plots, stories, characterizations, dialogue, titles and other material, whether in writing or not in writing at anytime theretofore or hereafter created or contributed by Artist which in any way relate to the Film or to the material on which the Film will be based (collectively, "Material"), are and shall be deemed to be the works made for hire for the Company. Accordingly, the Company is and shall be considered the author and, at all stages of completion, the sole and exclusive owner of the Material and all rights, trademarks and any and all other ownership and exploitation rights in the Material now or hereafter recognized in any and all territories and jurisdictions including by way of illustration, production, reproduction, distribution, adaptation, performance, fixation, rental and lending rights, exhibition, broadcast, re-use and all other rights of communication to the public, and the right to exploit the Material throughout the universe in perpetuity in all media, markets and languages and in any manner now known or thereafter devised (including but not limited to the advertisement, publicity, public exhibition, commercial exploitation and merchandising of the Material and the Film and in connection with other motion pictures. If under any applicable law the Material is not deemed to otherwise be considered a work made for hire or not effective to vest authorship and ownership of the Material and the Film and all rights therein in the Company, then to the fullest extent allowable and for the full term of protection otherwise accorded to the artist under such applicable law. Artist hereby assigns and transfers to the Company the Rights and, in connection therewith, any and all right, title and interest of the Artist (including present and future copyright) in the film and any other works now or hereafter created containing the Material.



National Development Plan on the Youth

The plan focuses on the critical *capabilities* needed to transform the economy and society.

Achieving these capabilities is not automatic, nor will they emerge if the country continues on its present trajectory.

Rising levels of frustration and impatience suggest that time is of the essence: failure to act will threaten democratic gains.

In particular, South Africa must find ways to urgently reduce alarming levels of youth unemployment and to provide young people with broader opportunities.



Single most important feature of the Copyright Amendment Bill for Performers

For the very first time in South Africa, there is the possibility of a statutory mechanism that secures the economic content of the rights that performers are routinely required to transfer to the producer.

Once contained in statute it would establish a realistic hope of negotiating equitable contracts.

It would create an enabling environment for the collection and payment to performers of fees for the use and exploitation of their image.



WIPO BEIJING TREATY

The WIPO Beijing Treaty on Audio Visual Performances was adopted on June 24, 2012.

"the new treaty brings Audio Visual performers into the fold of the international copyright framework in a comprehensive way, for the first time"

“boosts the economic rights and moral rights of Audio Visual performers

The Final Act of the treaty was signed by 122 countries, and the treaty itself collected 48 signatories.



AUDIO VISUAL PERFORMERS RIGHTS

- **This Bill is important for Audio Visual performers because it makes provision for:**
- **Exclusive rights:** where performers enjoy the exclusive right of authorising the fixation, broadcasting and communication to the public of their live performances, as well as the direct or indirect reproduction, distribution, rental, making available, broadcasting and communication to the public of their performances fixed in an audio visual fixation.
- **Remuneration rights:** The unwaivable right to receive equitable remuneration for the Broadcast, communication to the public, Rental and Making Available of their performances fixed in an audio visual fixation, when the corresponding exclusive rights have been transferred to the producer.
- **Moral rights:** The right for the performer to attached their identity to their performances and the right for that performer to object to any distortion, mutilation or other modification of their performances that would prejudice their reputation.



In its current form the Bill can be further refined:

- Defining the party to which the performer transfers their rights - the author, copyright owner or rights holder? These terms do not necessarily mean the same thing or identify the same person or entity. An AV work has many co-authors (including at least the director, the writer and the composer), but one single copyright owner: the producer.
- Ensuring that the exclusive remuneration right is not transferable, securing performers the capability to participate economically in the exploitation of their image.
- The Copyright Amendment Bill needs to make a specific distinction between phonographic and Audio Visual fixations in order to permit the remunerative rights to Audio Visual performers. SAGA proposes that the legislation adopts the definitions contained in the WIPO Beijing Treaty.
- The definition and composition of Collective Management Organisations (CMO's) specifically for Audio Visual performers. In permitting copyright ownership for Audio Visual performers it becomes logically necessary to create a dedicated and mandated organisation to collect royalties on behalf of these performers.



SAGA believes that it is important for the Bill to clarify aspects of CMO's including:

- The process of claiming rights for phonographic performers cannot be directly transposed onto Audio Visual performers; the operating mechanisms of the respective industries are distinct, as respectively outlined in the WIPO Beijing Treaty and the Performances and Phonograms Treaty. Furthermore, the current wording suggests an assumption that the owner of the copyright would seek to prevent the broadcast of the Audio Visual performance, rather than to ensure the payment of the remuneration due to the performer for their rights.
- If we simply transpose the phonographic interpretation to Audio Visual performers, we will create an unacceptably complex situation where CMO's will be required to collect for each right – Broadcast, Rental, Making Available, Communication to the Public. SAGA proposes a CMO per category of right holder in order to simplify the collection of royalties for Audio Visual performers, with CMO's collaborating in respect of their members.
- Limitation on Deductions: CMO's as proposed by SAGA, need to agree on a limitation on the justifiable expenses that may be deducted in respect of their fees. This would establish a norm for deductible expenses and SAGA proposes that ceiling to be defined by an agreed percentage of the fees collected.
- The relationship between the Performers Protection Amendment Bill and Copyright Amendment Bill needs to be consistent in their articulation of copyright by virtue of the performer's nationality and domicile and the duration of copyright and country of origin.
- The rights of a South African actor who performs in a feature film produced by another country must unequivocally be identified as a right holder by virtue of the Copyright Amendment Bill and the Performers Protection Amendment Bill, and the intellectual property rights they grant the performer to protect their moral and economic interests.
- The Copyright Amendment Bill needs to be enabling in its application to SA performers so that it permits the rights of reciprocity between CMO's from different countries, which have their own rights for collections of royalties for their performers. The administration of these reciprocal relationships needs to ensure that SA performers are guaranteed their collection rights, and are not discriminated against.



Further important considerations in the Bill:

- It needs to make provision for the exploitation of commissioned works to permit performers the rights of claiming royalties.
 - * Under the current proposed amendment, the broadcaster, as commissioner of the production, holds all rights for further exploitation which limits the rights of the producer to make use of other distribution platforms, thereby limiting the potential earning and rights of the performer.
- The assumption that the State, as funder, should automatically become owner of copyright of the production is problematic.
 - * While it is acknowledged that the State has an interest in generating industry growth and investment in the performance and production industries, it is not necessarily true that the State has automatic access to channels of broadcast and further exploitation.
 - * SAGA argues that, while the State as funder enjoys a legitimate right to a return on investment, this should not interfere with copyright ownership based on a chain of title and exploitation in accordance with professional standards, enabling performers to claim additional revenue, consistent with SAGA's submissions on the Copyright Amendment Bill and Performers Protection Amendment Bill .



PERFORMANCE INDUSTRY HAS FAILED

- Failed to transform
- Failed to give expression to the National Development Plan
- Failed to give access to sustainable earning opportunities for performers.



CONTRACTS

- Contracts on their own continue to exploit performers rights
- Contracts need to secure performers rights in statute

SAGA believes that the proposed amendments to the Copyright Amendment Bill are sound, progressive and viable. These proposals envisage specific rights for audio-visual performers which would remedy the inherent inequality of the industry.



THANK YOU

We invite your questions

