

The ACA and CPA submit joint feedback on Copyright and Performers' Amendment Bills

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The [Association for Communication and Advertising \(ACA\)](#) and the [Commercial Producers Association \(CPA\)](#) have made a joint submission to the Parliamentary Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour on the key concerns for stakeholders in South Africa's advertising and television commercial production industries. The representation was made in relation to the proposed Copyright Amendment Bill and the Performers' Protection Amendment Bill.



The submission was made on behalf of over 200 member companies and businesses from across the advertising and television commercial production sectors. The ACA and CPA have called for a balance to be struck between the need to protect intellectual property and the need to foster creativity and innovation in these industries.

The [ACA](#) and [CPA](#) have raised key concerns on behalf of industry stakeholders in South Africa's advertising and television commercial production industries. The submission was made during oral representation to the committee on Tuesday, 21 February 2023 by Leo Manne, ACA Board Member and MD of Network BBDO, and Bobby Amm, CEO of the Commercial Producers Association.

Karabo Songo, ACA chair says the Amendment Bills have far-reaching consequences for the advertising industry. "The proposed changes could impact greatly on our ability to create and innovate. We welcome the opportunity to engage with Government on these issues and we hope that our submission will contribute to a constructive dialogue on the way forward."

According to the ACA and CPA, the advertising industry is in favour of self-regulation, and the two organizations have agreed on best practices and guidelines on performer remuneration and standardised commercial production contracts. These practices ensure that performers are engaged on fair and equitable terms.

Key advertising industry concerns on the bills

While the industry supports updating South Africa's Copyright and Performers' Protection Acts, the joint submission raised several key concerns with the Amendment Bills, including the following:

- The absence of a meaningful economic impact assessment for proposed legislative changes in the Copyright Amendment Bill.

- The bill seeks to introduce new statutory royalty entitlements, creating uncertainty around who would pay and how these royalty rates would be determined.
- The introduction of royalties will also create an additional administrative burden for agencies.
- The bill also seeks to criminalize the non-reporting of all commercial uses of audiovisual works, including TV commercials, which would be practically unfeasible and add additional administrative burdens.
- Advertising agencies' bespoke requirements and production environment may not have been considered during prior public consultation rounds.

In their joint submission, the ACA and CPA expressed their concern about the competitive landscape of the global audiovisual content production industries, which has become increasingly intense due to the value it holds for driving foreign direct investment, job creation and broader economic growth in countries with thriving creative content production sectors. The production of television commercials is not limited to a single territory, and clients have the freedom to decide where to produce their commercials based on various factors, including a legislative environment that is conducive to the production process.

The submission cautioned that should the underlying legislative environment change and become disadvantageous for productions to take place in South Africa, local and international advertisers could well look to other territories in which to produce their commercials and advertising campaigns, which could cause runaway productions.

The CPA's Bobby Amm adds: "We are proud of our industry's accomplishments in South Africa, and we believe that our joint submission reflects our commitment to creating sustainable jobs and supporting transformation initiatives and protecting copyright. We hope that our submission will convince the NCOP that making the necessary changes to the Bills will ensure the continued success of the audiovisual content production industry in South Africa."

The submission also calls for Parliament to engage more closely with stakeholders in the advertising and television commercial production industries to ensure that any amendments to the Copyright Act and the Performers' Protection Act take into account the unique challenges and opportunities of these industries.

"Prescribing compulsory and standard contractual terms for all copyright agreements, and to prescribe royalty rates and usage tariffs will impact the freedom to trade and contract which could result in a negative impact on our economy," concludes Songo.

The submission concluded by arguing that the Bills suffer from numerous material defects, and that the passing thereof could harm the viability and growth of the industry, and other creative content production industries in South Africa, and that the Bills should be rejected in their current form in favour of redrafting thereof in cooperation with recognized industry experts and lawyers who are experienced in practicing copyright law.

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