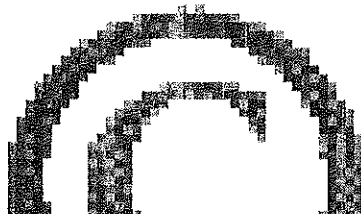


IN THE SECOND MEETING OF
THE FOURTH SESSION OF THE
THIRD PARLIAMENT
REPORT
OF THE COMMITTEE ON
CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS
ON THE
COPYRIGHT BILL



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**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL AND
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INTRODUCTION

The Copyright Bill was laid before Parliament on Tuesday 6th May 2003 and subsequently referred to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report, in accordance with Article 103(3) of the 1992 Constitution and Standing Orders 125 and 179 of the House.

DELIBERATIONS

The Committee invited individuals and interested stakeholders to present memoranda. The Committee in its deliberations met with the Minister of Justice and Attorney General, his team of officials and the Copyright Administrator. The Committee also benefited from a workshop on the Bill and later held a Public Forum to seek the views of the general public.

The Committee is grateful to all those who assisted it in its work.

REFERENCES

In considering the referral, the Committee made reference to the following:

- i. The Constitution of Ghana
- ii. The Standing Orders of Parliament
- iii. The Copyright Law, 1985, PNDCL 110
- iv. Agreement on Trade Related Aspects of Intellectual Property Rights (Trips Agreement) (1994)

BACKGROUND

The Copyright Law, 1985, PNDCL 110 was enacted to enhance the management and control of copyright in the country. Though dynamic and innovative at the time, technology has rendered certain parts of it inadequate. It is therefore imperative to revise the law to ensure the protection of creative works in this global information technology era.

The expectation is that the revision of the law would offer the needed protection so as to nurture and promote the creative talents of citizens of Ghana thus contributing to the development of Ghana.

The bill proposes among others the following:

- (a) The establishment of a National Folklore Board
- (b) The modalities for the permitted use of copyright
- (c) The protection of Performers, and Broadcasting organizations
- (d) The Duration of copyright and
- (e) The establishment of a Copyright Tribunal

OBJECTIVE OF THE BILL

The purpose of the Bill is to revise existing legislation that regulates copyright and to make provision for the Copyright Office in consonance with the constitution. The bill will also enable Ghana live up to its international obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreements) of the World Intellectual Property Organization and the World Trade Organization.

OBSERVATIONS

The Committee in its discussions examined the Bill part-by-part and observed the following:

PART 1

Part 1 of the Bill is essentially a re-enactment of some provisions of section 1-9 of the Copyright Law, 1985 (PNDCL 110). In that law there is a conflict with respect to sound recordings, which are referred to in section 2(1) of the law as copyright. In sections 29 and 33 of that law however rights of performing artists and the works of musical producers are referred to as neighboring rights.

This creates a conflict. The Bill therefore deletes the references to neighboring rights, thus making it unequivocal that the works of musical producers are to be copyright.

This part also broadens the definition of folklore to include items such as Kente and Adinkra designs.

PART II

Part II of the Bill is on the duration of Copyright generally. The Committee observed that the duration of copyright is to be seventy years, an increase of twenty years from what prevailed under PNDCL 110.

PART III

This part Contains expanded provisions on the permitted use of protected Copyright work by libraries and archives. The Committee also observed that Sections 21-25 on

compulsory translation license in PNDCL 110 have not been repeated in the Bill because that concept is no longer valid under International norms.

PART IV

Part IV of the Bill contains innovative provisions with respect to sound recordings and mechanical rights. Also security devices for copyright works to combat piracy have been provided for in this part.

Legal support for the imposition of levies on blank audio visual cassettes and other devices used for copying protected material have also been provided for.

PART V

The Committee further observed that in Part V of the Bill, Clauses 28 to 39, repeat Sections 29 to 40 of PNDCL 110 except that these provisions have been redrafted and rearranged for clarity. Clause 37 of the Bill provides that authors, performers, producers and other copyright owners, may collect royalties for the use and performance of their work at public places.

PART VI

Part VI of the Bill dwells on the protection of performers and Broadcasting Organisations. Provision is made for the duration of performer's right. Also the issue of the moral rights of a performer and the limitation on economic rights of performers and broadcasting organizations are spelt out in this part.

PART VII

This part, which is on General Provisions provides for works in the public domain and the use of such works. Provision is also made for compensation to be paid to

victims of offences in relation to copyright and related rights. Civil remedies for persons whose copyrights are infringed are catered for in Clause 47.

The Committee also observed that settlement of disputes is provided for under Clause 48. The establishment of collective administration societies is provided for and the Minister is required to make regulation to regulate the formation, operation and administration of such societies. A Copyright monitoring team is established under clause 50 to enforce copyright protection measures.

An innovation of a Copyright Tribunal is made in Clauses 51 to 58 and it is required to among other things to hear and determine matters relating to licensing schemes and make recommendations on the rate of royalties to the Minister. The High court has appellate Jurisdiction over decisions of the Tribunal.

PART VIII

This part, which is on the National Folklore Board deals with its establishment, the tenure of office of Members of the board and the use of folklore.

PART IX

Part IX of the Bill deals with Administration, the Copyright Office and miscellaneous matters. The continuous existence of the Copyright Office is in clause 65. The Legal Service Board is to be the governing body of the Copyright Office, thus transferring responsibility of the Office from the National Commission on Culture to the Ministry of Justice.

AMENDMENTS PROPOSED

In the light of the above observations, the Committee proposed the following amendments:

Clause 9 (7)

At the end insert "a person dissatisfied with the decision of the Copyright Administrator may apply to the High Court for review"

This amendment is being proposed by the Committee to ensure that the decision of the Copyright Administrator is not made final and to make room for a dissatisfied person to apply to the court.

Clause 13

At the end delete "the latest" and insert "latter"

This is to make the clause grammatically sound.

Clause 25 (1)

In line 2 delete after "shall " "on the approval of the Copyright Office"

The committee believes that the Internal Revenue Service should be the sole Agency dealing with the purchase of security device for copyright works.

Clause 26

Delete (i) in front of the Clause.

This deletion is being made because there are no sub clauses.

Clause 27 (3)

In line 2, between "(PNDC L.320)" and "shall" insert "as various amended"

This is to make use of the various amendments that have been made to the law.

Clause 30

At the beginning insert "subject to clauses 5 (C) and 28 (3) of the Act"

This is to bring the Clause in consonance with the above-mentioned clauses so that the right(s) of the Owner is not ousted.

Clause 43

Delete the whole clause and insert a new clause as follows: "A person who infringes a right protected under this Act commits an offence and is liable on summary conviction to a fine of not more than 1000 Penalty Units and not less than 500 penalty units or to a term of imprisonment of not more than three years or to both; and in case of a continuing offence to a further fine of not less than 25 penalty units and not more than 100 penalty units for each day during which the offence continues."

The committee was of the view that the penalty units were too low for the offences committed and the maximum term of imprisonment of two years was also seen to be low hence the amendment.

Clause 44 (2)

Delete the whole sub clause and insert a new sub clause as follows: "A person who contravenes this section commits an offence and is liable on summary conviction to a fine of not less than 150 penalty units and not more than 1000 penalty units or to a term of imprisonment of not more than 3 years or to both; In the case of a continuing offence to a further fine of not less than 25 penalty units for each day during which the offence continues".

The Committee believes that there is the need to make the punishment for offences as harsh as possible to deter prospective offenders, hence the amendment.

Clause 50 (2)

In line 1 after "police officers" insert ", three members of the stakeholders"

This is to enable the stakeholders to be part of the monitoring team.

Clause 54 (1)

In line 1, after "Minister" insert "on the advice of the Copyright Administrator"

This is to facilitate a wider consultation.

Clause 54 (2)b (iv)

Delete the entire sub clause. This is seen to be irrelevant.

Clause 54 (3)

In line 3 between "Minister" and "may" insert "upon the advice of the Copyright Administrator"

This would facilitate a wider consultation.

Clause 56 (2)

In line 1, delete at end "the chairperson shall" and insert "the Minister shall"

This amendment is being made because the Minister is the appointing authority.

Clause 56 (3)

In line 1 delete "sub section (3)" at end and insert "sub section (2)"

This is due to the fact that the sub section in question is sub section (2) and not (3).

Clause 59 (2)

In line 6, delete "the Minister" at the end and insert "the Council of State"

This is to enable the Council of State help in the appointment of the Board members.

Clause 60 (3)

In line 4 delete at end "Minister" and insert "Council of State"

This is to ensure that the Council of State is made to assist the President in appointing the Board members.

Clause 61

In line 3 insert at end "and Economic Planning"

This is to have the right designation for the Ministry.

Clause 64 (3)

In line 1 delete "Copyright Administrator" between "the" and "and" and insert "Board"

The Committee is of the view that the Board, which is in charge of the folklore, should manage its own funds.

Clause 66 (2c)

Delete the entire sub clause.

The sub clause was seen to be unnecessary.

Clause 68 (4)

At end delete "but shall not be relieved from the ultimate responsibility of the discharge of the duties."

This is seen to be irrelevant.

Clause 73 (4)

In line 2, delete "report" at the beginning of the line and insert "reports"

This is to correct a typographical error.

Clause 76

Insert a new paragraph as follows:

"Producer" means a person or an entity that:

- (a). Organises or finances and organises
 - (i). Stage performances; or
 - (ii). Productions or
- (b). Undertakes the first fixation of an audiovisual work or sound recording.

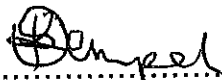
The Committee realized that the meaning of "Producer" was not captured in the Bill.

CONCLUSION

The importance of the Copyright Bill cannot be over emphasized, considering the constant unrest in the creative works industry. It is also important as it seeks to improve the area of intellectual property legislation thus nurturing and promoting the creative talents of the citizenry, which would contribute to the development of Ghana.

The Committee therefore recommends to the House the passage of the Copyright Bill subject to the amendments proposed above.

Respectfully submitted.



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HON. KWAME OSEI-PREMPEH
(CHAIRMAN OF THE COMMITTEE)



.....
MISS EVELYN BREFO-BOATENG
(CLERK TO THE COMMITTEE)

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7th July 2004.