

Memorandum: Remember Our Legends

Since the inception of the South African film and TV industry, performer contracts were never open for fair negotiation, rooted as they were in monopolies established by the apartheid economy. Many brave and iconic performers of that time nurtured a vision of an industry that would one day embrace justice and equality, so that all actors would enjoy the freedom to earn a fair living from a thriving creative economy. But decades later those great actors, many of whom have passed on, despair that their goal of fair earnings has been abandoned. It is a travesty that actors of today are faced with the same unfair exploitation and contractual limitations that our industry veterans fought so fiercely to overcome decades ago.

It was up to industry leaders and law makers, seized with the political will, to draft legislation that grants exclusive rights for actors to earn a fair share of revenue from TV and film productions. But not only were our veteran actors denied this essential economic right and their appeals ignored, worse, our legends themselves have been forgotten. The betrayal of our screen heroes is a national disgrace, and this outrageous injustice demands correction.

It is a disgrace that performer protection laws have not changed since the apartheid era. It is a disgrace that Mary Twala, Elize Cawood, Joe Mafela, Henry Cele, Allen Booie, Nomhle Nkonyeni and others, had no statutory right to claim royalties, while their performances went on to critical acclaim and their work continues to generate revenue for producers and broadcasters.

It is a disgrace that while the 1985 TV series 'Shaka Zulu' is reported to have earned an estimated R5 billion in global revenue, the South African cast earned no share of that residual income. It is a disgrace that the hit 2009 sci-fi movie 'District 9' earned an estimated \$211 million in global box office takings, but the South African cast did not earn a cent of that revenue. In both cases actors were forced to sign contracts that offered them no right to claim a percentage of the residual income, and it is a disgrace that years later, actors are no closer to

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securing that economic right.

The right to fair royalties is nothing new in South Africa. Musicians and composers have exercised this right for nearly 60 years. Actors around the world continue earning a share of revenue when the movies or TV series that feature their performances are licensed, streamed or downloaded anywhere in the world.

Our mandated lawmakers have had ample opportunity to engage with performers' royalty rights while they kicked around the Performers Protection Amendment Bill and the coupled Copyright Amendment Bill. After the National Assembly signed the bills in March 2019, it fell to the president to sign the bills or note his reservations on Constitutional grounds. He took an astounding 15 months to consider his options before BlindSA sought to compel his response through papers filed in the Constitutional Court in May 2020.

The president's response indicated a concern for international Intellectual Property lobbyists, US-based film studios and European film producers, rather than any thought to the needs of South African actors.

The Honourable Members of our legislature are now on holiday, safe in the knowledge that the public purse will feed, transport and accommodate them in luxury. Actors face a holiday season that will be anything but festive – some may not have sufficient income to cover food, rent or to pay the year's debt incurred during months of lockdown. Yet actors could have earned a sustained income from the exploitation of their audio-visual work. Income in the form of fair royalties.

Honourable Members have not just betrayed the memory of our industry's legends, they have casually and cynically left all actors out in the cold. They have forgotten respect. Respect for our elders, for those who sacrificed and triumphed against odds stacked against them in a racially segregated economy. Respect for our cultural heritage and an entire creative sector. Respect for those who laid the foundations of our industry, for the pioneers who should be celebrated, immortalized and paid their just dues.

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Honourable Members have forgotten respect for our youth, as our next generation of actors. They have forgotten the rights of blind people, of learners, teachers, authors and researchers. As lawmakers they have forgotten their mandate to address injustice and inequality. It is a national disgrace, and it is unforgivable. It is time for them, and everyone, to remember our legends.

We therefore strongly urge our legislators to prioritise their work on performer protection and copyright reform at the next Parliamentary sitting in 2021.

#RememberOurLegends #SigntheBills #FairRoyaltiesNow

Jack Devnarain - Chairman: South African Guild of Actors (SAGA)

1 January 2021

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