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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

THE NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NO. 2646

Mr E Mthethwa (EFF) to ask the Minister of Trade, Industry and Competition:

Whether the collecting societies accredited by his department, such as SA Music Performance Rights Association and Independent Music Performance Rights Association, are strictly (a) collecting and (b) distributing royalties only to their registered members; if not, what measures has the department put in place to prevent the unauthorised (i) collection and (ii) distribution of royalties to nonmembers; if so, what are the relevant details?

NW2732E

REPLY:

I have been advised by the Companies and Intellectual Property Commission (CIPC) as follows.

- (a) The regulatory framework governing the accreditation and operation of collecting societies in South Africa is provided for in the Copyright Act, 1978, the Performers' Protection Act, 1967, and the Collecting Society Regulations, 2006.

The Collecting Society Regulations regulate the accreditation, licensing, collection and distribution functions of collecting societies. The Regulations do not expressly provide that collecting societies may collect royalties only on behalf of their registered members. Instead, accredited collecting societies are responsible for the licensing of users, collection of royalties and distribution of royalties in accordance with the use of the protected works or sound recordings they administer.



Collecting societies are accredited by the Companies and Intellectual Property Commission (CIPC). Currently, the following collecting societies are accredited:

- South African Music Performance Rights Association (SAMPRA);
- Independent Music Performance Rights Association (IMPRA); and
- IMBOKODO.

Accredited collecting societies are required to license users for the use of music repertoire or sound recordings associated with their members. Licensed users provide music usage reports to the relevant collecting societies in terms of concluded license agreements. Collecting societies are required to assess such reports, identify the repertoire belonging to their members, and invoice users accordingly. Royalty distributions are based on the actual reported use of the works or sound recordings.

The CIPC conducts post-distribution verification exercises to confirm compliance with accreditation requirements. This includes verification, on a sample basis, that royalties have been distributed to bona fide members of the collecting society. Due to the volume of transactions, it is not feasible to verify every transaction. The CIPC does not administer rights or royalties, but exercises an oversight and regulatory role.

The Copyright Review Commission Report of 2011 recommended that collecting societies should collect royalties only on behalf of their registered members. However, this recommendation has not yet been fully codified in the current legislative framework, which gives rise to certain practical challenges in implementation.

In practice, sound recordings may involve multiple performers, some of whom may belong to different collecting societies or may not be members of any collecting society. In such instances, it may be unavoidable that royalties relating to non-members are collected as part of the collective management system. This does not constitute non-compliance, but reflects the operational design of collective rights administration. In such cases, collecting societies engage one another to reconcile membership and distribution matters in a transparent and fair manner.



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As part of ongoing oversight, the Department of Trade, Industry and Competition (**the dtic**), together with the CIPC, has initiated a membership verification project involving the three accredited collecting societies. This intervention was undertaken, inter alia, in response to a complaint lodged by IMBOKODO and aims to strengthen governance, transparency and compliance within the collective management system.

(b) (i),(ii)

Furthermore, while the Collecting Society Regulations, 2006 do not regulate all day-to-day operational aspects, accredited collecting societies are required to develop Distribution Rules, approved by their members, which govern the allocation and distribution of royalties. This approach is consistent with international best practice in collective rights management.

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