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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

THE NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NO. 2647

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

- (1) What monitoring and/or audit mechanisms have been put in place to ensure that accredited collecting societies comply with the provisions of the Copyright Act, Act 98 of 1978, and Performers' Protection Act, Act 11 of 1967, regarding the (a) consent and (b) compensation of performers;
- (2) whether he has found that all accredited collecting societies operate transparently and in the best interests of registered performers; if not, what further interventions does he intend to put in place to ensure that collecting societies comply with all the relevant guidelines in their operations; if so, what are the relevant details? NW2733E

REPLY:

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

- 1) a) The Companies and Intellectual Property Commission (CIPC) does not manage or conduct the day-to-day business operations of accredited collecting societies. In terms of Regulation 4 of the Collecting Society Regulations, 2006, the CIPC exercises a supervisory and oversight function to ensure that collecting societies discharge their obligations in accordance with the applicable legislative framework, including the Copyright Act, 1978 and the Performers' Protection Act, 1967.

As part of this oversight role, the CIPC conducts post-distribution verification exercises after royalties have been distributed by collecting societies. These verifications include confirming, on a sample basis, that royalties have been distributed to legitimate members of the collecting society. Due to the volume of transactions involved, it is not



feasible to verify every transaction. The CIPC does not administer performers' rights or royalties directly.

b) With regard to the issues of consent and compensation of performers, these concepts are regulated through the licensing and remuneration framework established in section 9A of the Copyright Act and section 5 of the Performers' Protection Act, which provide for equitable remuneration ("Needletime") for performers and owners of sound recordings arising from the use of such recordings.

- 2) Since the reintroduction of Needletime into the South African legal framework in 2002, the Department of Trade, Industry and Competition, together with the CIPC, has taken sustained steps to ensure that the regime is implemented. While there were significant challenges in the early years, including resistance by users to make payments, royalty distributions are now occurring in accordance with the legislative framework. To date, more than R1 billion has been distributed to performers and owners of sound recordings based on the actual use of such recordings. This regime has materially contributed to ensuring that performers are able to derive income from the use of their work.

Historically, performers were excluded from the Needletime system. The current legislative framework is therefore transformative and inclusive, as it expressly recognises and protects the rights of performers to equitable remuneration.

In addition, the Copyright Review Commission, commissioned by the Department, made recommendations aimed at strengthening governance, transparency and fairness in collective rights administration. These recommendations have informed the development of the Copyright Amendment Bill.

Members of accredited collecting societies are empowered to participate in governance and decision-making processes, including the approval of Distribution Rules and other internal governance instruments. Collecting societies are also



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encouraged to establish internal complaint-resolution mechanisms to address disputes prior to escalation to the CIPC.

The CIPC approves the distribution plans of collecting societies and investigates complaints relating to non-compliance. Where material breaches of the accreditation conditions or legislative framework are identified, the CIPC may take appropriate regulatory action, including the revocation of accreditation, where warranted.

At present, certain matters relating to the interpretation of aspects of the legislative framework are the subject of civil litigation. These matters are *sub judice*. Once the court has provided guidance, the CIPC will develop and issue appropriate implementation guidelines informed by the judgment.

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