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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

THE NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NO. 2648

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

- (1) What standard sanctions are imposed by his department to collecting societies which have been found to have distributed royalties to nonmembers and thereby contravening their accreditation conditions and the relevant legislation;
- (2) Whether there are any unclaimed royalties held by collecting societies for nonmembers; if not, what is the position in this regard; if so, what procedures are followed to locate and/or compensate the rightful performers and/or rights holders?

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REPLY:

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

- 1) The regulatory framework governing the accreditation and operation of collecting societies is provided for in the Copyright Act, 1978, the Performers' Protection Act, 1967, and the Collecting Society Regulations, 2006. The current Collecting Society Regulations do not expressly provide that collecting societies may collect royalties only on behalf of their registered members. As such, the collection of royalties relating to non-members does not constitute a contravention of the legislation or accreditation conditions.

In terms of Regulation 3(6) of the Collecting Society Regulations, accreditation may be withdrawn where a collecting society materially fails to comply with the legislative framework or its accreditation conditions. However, the collection of royalties in respect



of non-members is not listed as a ground for withdrawal of accreditation, given the absence of an express statutory prohibition. It is important to distinguish between the collection of royalties and the distribution of royalties, which are governed by different operational and governance considerations.

In South Africa, collecting societies generally operate through the issuing of blanket licences to users, such as broadcasters and venues, covering the use of a broad repertoire of sound recordings or musical works. 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 circumstances, it is inevitable that royalties attributable to non-members may be collected as part of the collective management system. This does not constitute non-compliance but reflects the operational design of collective rights administration.

Where more than one collecting society licenses the same user, collecting societies engage one another to reconcile repertoire and membership information. The management of such situations is addressed through the Distribution Rules of each collecting society, which are approved by their members.

There are no standard sanctions prescribed in legislation for the collection of royalties relating to non-members, as such conduct does not constitute a legal contravention.

The Companies and Intellectual Property Commission (CIPC) may, however recommend corrective measures where a collecting society's conduct is found not to be in accordance with its approved Distribution Rules or accreditation conditions.

- 2) This question speaks directly to the business operations of the Collecting Societies. Distribution Rules of the Collecting Societies deal with the distribution of royalties and unclaimed royalties, these rules are approved by members. These royalties are held for a specified period. If a non-member has music that has been played, but they have not registered it, those royalties may be held. When the tracks are later notified or identified, Collecting Societies can pay these out, even to non-members who



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subsequently join or identify their works however SAMPRA and IMPRA may have specific processes which non-members must follow. The internal processes of the Collecting Societies will deal with complaints by non-members, if there is no resolution the matter may be escalated to the CIPC. Performers who decide against joining a Collecting Society are at a disadvantage and therefore CIPC encourages performers to join a Collecting Society.

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