

Portfolio Committee on Trade and Industry

Copyright Amendment Bill – Collecting Societies and Copyright Tribunal

National Parliament – Cape Town
South Africa

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Companies and Intellectual
Property Commission

a member of **the dti** group

Discussion Points:

- COLLECTING SOCIETIES IN SOUTH AFRICA
- COLLECTING SOCIETIES – MEMBERS' DRIVEN AGENCIES
- THE ROLE OF COLLECTING SOCIETIES
- ONE COLLECTING SOCIETY PER RIGHT
- BENCHMARK – OTHER JURISDICTIONS
- NAB VS SAMPRA COURT CASE (TARIFF SETTING)
- WHY COLLECTING SOCIETIES ARE IMPORTANT?
- COPYRIGHT TRIBUNAL

Collecting Societies in South Africa

- The following collecting societies exist in South Africa:
 - **SAMPRA** (South African Performance Rights Association) – it administers rights in sound recordings for air play usage (needle-time rights)
 - **IMPRA** (Independent Music Performance Rights Association) – it administers rights in sound recordings for air play usage (needle-time rights)
 - **SAMRO** (Southern African Music Rights Organization) – it administers rights in musical compositions
 - **CAPASSO** (Composers, Authors and Publishers Association) – it administers reproduction rights for composers, authors and publishers (often called mechanical rights – when music is adapted to different platform / mediums)
 - **DALRO** (Dramatic, Artistic, Literary Rights Organization) – it administers rights in literary, dramatic and artistic works (it is a subsidiary of SAMRO)

Collecting Societies – members' driven agencies

- Collecting Societies are **non profit agencies** formed and established by members (right holders)
- Members (Right holders) mandate the collecting societies to **administer and manage** their rights (Members shall put management structure to run with administration and shall have the power to release them from office for maladministration)
- **Actual usage of copyright works** is derived from the **information furnished by users** (or the so-called log sheet)
- During annual, ordinary meeting and special meetings, **members take resolutions** on how the administration must be done
- The current Regulations on Collecting Societies also allow a Collecting Society to set aside **10% of collected royalty for performers' social welfare**

Roles of Collecting Societies

- Collecting Societies exist to:
 - license users (usually blanket license – use and pay approach)
 - collect royalties from licensed users
 - distribute the royalty to members (right holders) in accordance with the actual usage of the members repertoire
 - conclude reciprocal agreements with other collecting societies (only if desirable and expedient)
 - deduct admin costs
 - account to members regularly

One Collecting Society per right

- CIPC made submissions on the need to have one collecting society per right (**letter to Chairperson of the PC**)
- The stakeholders in majority made submissions and **supported one collecting society per right**
- One collecting society per right creates **orderly system**, **instill a stable culture of compliance** from the users and **avoid double admin costs** on a royalty belonging to the beneficiaries
- In the case of sound recordings rights a tariff is determined by an agreement between a performer, user and owner of sound recording (this will not be possible if there is more than one collecting agency per that right – the other collecting society might agree to a different tariff)
- Double membership has been observed which makes distribution cumbersome not to mention that users tend to **prefer collecting societies when discharging their obligations**

One Collecting Society per right – cont'd

- In **open market jurisdictions** with strong emphasis on private ownership the legislation may simply recognize the existence of the rights but leave it to right holders to organize themselves and form Collective Societies (in such cases a collecting society is formed on voluntary basis)
- In **planned economies or mixed systems** the Collecting Societies may be specifically regulated by statute (Copyright Act in our case) and may not be possible to form a voluntary or private society
- A regulated market provides a **steady business environment** and **legal certainty**
- A government policy position **to regulate all collecting societies** is therefore supported to harvest all intended policy desires
- Collective means **doing something as a group or combined**

Benchmarking with other jurisdictions

- **Kenya:** Kenya Association of Music Producers (KAMP), Reproduction Rights Society of Kenya (KOPIKEN), Music Copyright Society of Kenya (MCSK), Performers Rights Society of Kenya (PRISK)
- **United Kingdom:** Authors' Licensing and Collecting Society (ALCS), Artists Collecting Society (ACS), Mechanical Copyright Protection Society of Great Britain, PRS for Music, Phonographic Performance Ltd (PPL)
- **Canada:** 29 agencies collecting for different rights including Directors, Screenwriters, Private Copying
- **Brazil:** 02 Collecting Agencies (Brazil has problems in the area of collective management of rights)
- **United States:** 13 agencies in different rights

NAB vs SAMPRA Court Case - Tariff

- The judgment from the Supreme Court of Appeal has been **served to the Chairperson** for circulation to honorable members for consideration
- The judgment related to **setting of tariff** in the broadcasting sector for needle-time rights
- The appeal was against the **Copyright Tribunal ruling by Judge Sappire** sitting as the Commissioner of the Copyright Tribunal

Why are collecting societies important?

- Collective management of rights is a well known **global system** to monitor usage of copyright works on behalf of the right holders
- It is **not practically possible** for right holders to monitor the usage of their copyright works in various commercial platforms especially digital spaces
- Collecting Societies serve as **machinery** to reciprocate royalty from other jurisdictions through reciprocal agreements with their counter parts collecting societies
- Collecting Societies is usually administered by a management team (or board) with **knowledge, expertise and business acumen** to commercially maximize the rights so entrusted
- Copyright International Treaties play a vital role in the collective management of rights, as they give rise to **national treatment and reciprocity principles**

Copyright Tribunal

- CIPC has noted the letter from the Honorable Minister of Justice and Constitutional Development and the number of the judges can be reduced to **eight (08)**
- CIPC agree to Chairperson and Deputy Chairperson in the composition of the members of the Copyright Tribunal
- Retired judges will be referred to as **judges discharged from active service**
- The information we can give is that the Copyright Tribunal's **jurisdiction is extended to include dealing with all copyright disputes** (currently the Copyright Tribunal deals only with licensing schemes or simply tariff determination)
- Judges serving will be used only when there are cases to be heard (no permanent office set-up)

Copyright Tribunal – cont'd

- Qualifications for serving in the Copyright Tribunal can be removed as advised by the Honorable Minister as they are **unnecessary and/or repetitions**
- CIPC further embrace the advice to provide that there must be **Consultation** with the Chief Justice when a member of the Tribunal is removed or suspended (29C)
- Again CIPC embrace the advice to provide **Consultation** with the Chief Justice when the Minister of Trade and Industry when prescribing the rules that determine the form and manner of the proceedings before the Tribunal
- CIPC agree to **retain the appeal provisions** in terms of section 36 of the principal Act

Thank You – Ke a leboga

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