

Dear SAMRO Member

It is with great dismay that I followed the various discussions about SAMRO in the media over the weekend, following the publication of the City Press article on Sunday 1 April 2018.

The inflammatory article by journalist Charl Blignaut raised a number of deeply concerning allegations as raised by Ms. Hlengiwe Mhlaba's consultant Graeme Gilfillan about the membership and distribution rules of SAMRO.

It must be recorded that SAMRO is already reviewing the rules in question as part of a far wider policy review because of the clear disharmony between some of our policies and the SAMRO we wish to see going into the future, as well as clear unhappiness over the years from members.

SAMRO did send an extensive response to the City Press journalist before publication but it is disappointing to observe that SAMRO's inputs were largely ignored.

The article, although with many factual inaccuracies, does highlight some of the concerning and outdated policies and practices already identified by the board and management as requiring urgent change at SAMRO and I have been working with the team within SAMRO to do this.

The fact that we need to change and improve certain aspects of the way SAMRO operates is well known and was a key mandate given by the board to me and the executive in July 2017, and was a very clear directive from you, the membership, of SAMRO at the EGM and AGM meetings of October and November 2017.

Over the last 9 months, we have already started on this path to change:

- We have created a specific department to deal with undistributed royalties (held as UNDOC) to prioritise and expedite the distribution of these funds.
- We have also started a full review of all membership rules, including rules relating to board membership.
- The board has undergone an extensive review on its performance (both collectively and individually) and for which a report will be submitted to SAMRO.
- A full investigation is underway with independent forensic investigators to explore the allegations that SAMRO's 2016 investment in a subsidiary company in Dubai was irregular. It should be remembered that it was the SAMRO board and management that called an Extraordinary General Meeting (EGM) last to raise the matter of closing the subsidiary.

We will be holding another EGM in June 2018 to further engage with members on the new rules of SAMRO going forward. This will include how do members qualify for the

various membership tiers, how to qualify for the annual Grant of Rights Payments, the public domain public rules etc.

So although the matters raised in the City Press are important and relate to the way SAMRO has historically conducted business, it should be remembered that these fall within a bigger review of SAMRO's operations as a whole. A review that started in 2017.

I would like to now address, in this letter, several issues raised in that article:

1. Who or what is DP?

DP is not a person; DP is simply an internal system categorization that is allocated to all public domain works.

A musical work will be in the public domain if it never had copyright in the first place (like indigenous African music that never "qualified" for copyright under the old copyright framework) or if the copyright has expired (which happens 50 years after the death of the composer as per the Copyright Act.).

The allegation made is that SAMRO has allocated R2billion to the DP category. This, based on the information at my disposal, I believe is factually incorrect. I have commissioned an exercise to get an accurate figure which the board and membership of SAMRO will have access to within the week.

2. Understanding the 16.7% Arrangement Rule – what is this and who gets the balance (83.3%)?

This 16.7% rule deals with musical arrangements of an existing musical work.

Where an arranger creates an arrangement, he (the arranger) receives 16.7% of the copyright in the new arrangement while the balance goes to the composers of the original work because the presumption is that original work forms the basis (and thus lion's share) of the new arrangement.

This presumption may be questioned where the arrangement is so fundamentally different to the original work that the original cannot be said to be "worth" 83.3% of the copyright.

NB: Even though the arrangement is a new copyright-protected work (stand-alone from the original), the ownership in it is split between the original composer and the arranger.

What if the arrangement is of a song that is in the public domain?

The theory behind copyright expiring 50 years after the composer's death is so that the work can be used for the benefit of the public after the composer has had the exclusive right to the work during its copyright lifetime. Anyone can use a public

domain work but no one can ever own it.

The songs in question, arranged by Ms. Mhlaba, were in the public domain (i.e. there was no copyright accruing to the original composition which she was arranging).

According to the Arrangement Rules in force at SAMRO, Ms. Mhlaba was allocated the 16.7% discussed above.

The remaining 83.3% is assigned the category "DP", indicating that this portion is in the public domain (i.e. there is no copyright) and the royalties that would have accrued had the work been in copyright are ring-fenced and distributed to all SAMRO member musical works that have been active in that year.

Gilfillan's argument that an arranger should own 100% of the arrangement of a work is challenged by SAMRO on the grounds that, if his argument is followed through, it means arrangements of musical works in copyright should also belong 100% to the arranger. This cannot be the case.

Whether the original work is in the public domain or has copyright should not be the deciding factor in law as to the copyright ownership of the arrangement. The legal principles of arrangements must be applied uniformly.

That said, it is acknowledged that the redistribution policy of DP categorized works is not best practice and SAMRO, as part of its policy overhaul, is committed to addressing this urgently.

What is promising here is that the CIPC (under the Department of Trade and Industry) is drafting Regulations which will govern how indigenous musical works should be treated for copyright purposes where an arrangement is made. This will give much needed clarity in those instances and mandate SAMRO on the correct channels into which to pay these royalties.

3. Does SAMRO's board and executive in 2018 acknowledge that its rules are outdated and need to change urgently?

Yes! In November 2017 at the AGM it was agreed that SAMRO's Membership Rules (which include Distribution Rules) are outdated. The rules governing board member eligibility, membership tiers and all other rules were discussed extensively at the AGM of November 2017 and it was agreed that a process to amend these would commence soon thereafter.

Further, the need to review the copyright percentage in arrangements and review the DP rule is accepted by SAMRO.

This process is indeed underway and has been communicated to members accordingly.

You will have received the following from SAMRO over the past few months:

- A questionnaire requesting your input regarding membership tiers, Grant of Rights Payments, Board membership etc.;
- A timeline of the process including **Roundtable Member Meetings** being held this month in the three major centres (**10 April - CPT / 13 April - DBN/ 23 April - JHB**) and an **Extraordinary General Meeting in June 2018** where NEW rules will be agreed upon by the membership;
- Proposed amendments for discussion (to be sent during the course of the current week).

Notice of the AGM will be given closer to the time of the meeting. Please keep looking out for information and notices from us in this regard.

In this same spirit, we welcome the Commission of Enquiry mandated by the Minister of Arts and Culture Nathi Mthethwa yesterday (2 April 2018). From the time executive management changed in July 2017, many improvements to processes and operations have been identified as necessary and urgent and we are happy to share and work with the Commission in this regard.

4. The relationship between SAMRO and multinational publishers

The listening (or playing) patterns on radio have dictated that the majority of royalties in the past were paid to international rightsholders – whether through local sub-publishers and affiliates or sister collecting societies.

With the change in radio/TV playing patterns, however, we are seeing more royalties staying in South Africa. This is evidenced in the last Radio Distribution (March 2018) which saw a total of 6 907 local members earning either for the first time (over 2000 new earners) or increasing their SAMRO earnings significantly. In total, an increase R24.2 million in local distributions was seen.

It was also alleged that over half of SAMRO's board is made up of multi-national publishers. This is not true. Only one board seat is occupied by a publisher that can be described as a multinational publisher. Please follow the link to see a list of the board members: <http://www.samro.org.za/about>.

It should be remembered that locally based multinational publishers play the role of administrators for many local publishers and as such continue to play an important role in the copyright value chain.

5. The contractual relationship between Ms Hlengiwe Mhlaba and Mr Sipho Makhabane

Indeed both Ms Hlengiwe Mhlaba and Mr Sipho Makhabane are SAMRO members. However, in the interest of protecting the privacy of Ms Mhlaba and Mr Makhabane in relation to their earnings, SAMRO is not in a position to disclose information relating to earnings.

SAMRO has engaged with the members in question, including Ms Mhlaba's advisor Graeme Gilfillan, and within this interaction a way forward was agreed upon to ensure that the SAMRO rules are applied objectively. In instances where there was conduct which was not in line with the rules or it was found that one member benefitted unduly at the expense of another member, this has been and will continue to be addressed

On the allegations of corruption relating to Mr. Makhabane, SAMRO takes this assertion in a serious light and will take the appropriate actions to ensure that this matter is resolved taking into account its legal obligation and the interests of both members.

6. Ongoing investigation of AEMRO (Dubai subsidiary)

At the AGM in November 2017, it was mandated by the membership of SAMRO that a further forensic investigation should take place as the initial investigation was found to not be satisfactory.

This "phase 2" forensic investigation is currently underway with professional services firm Sekela Xabiso, the scope of which covers both civil and criminal liability in both South Africa and Dubai.

7. In conclusion

The frustration with SAMRO over the last number of years and decades regarding slow transformation in processes and rules is noted and is regrettable.

However, a commitment to changing and evolving for the benefit of its members has been unequivocally made by SAMRO's board and new executive management at its last AGM. Further, SAMRO is committed to ensuring that any wrongdoing in the past will be accounted for. And lastly, we are open and committed to working with the relevant government departments to ensure SAMRO operates at the upmost levels of efficiency and transparency.

Thank you.

Nothando Migogo
SAMRO CEO