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Dear IMPRA member,

UPDATE ABOUT COLLECTIONS AND DISTRIBUTION.

INTRODUCTION

1. It has come to the IMPRA Board's attention that SAMPRA recently issued a notice purporting to set out facts and circumstances surrounding the payment of needletime royalties by SABC. IMPRA does not intend to pre-empt any litigation that may be instituted by SAMPRA in this regard but finds it necessary to set the record straight by addressing some of SAMPRA's allegations, and also detailing SAMPRA's general conduct in the administration of needletime royalties.

COMMUNICATING TO THE PUBLIC ROYALTY COLLECTIONS

2. IMPRA was accredited by CIPC after SAMPRA was accredited. When SAMPRA collected royalties for the use of sound recordings from the retail sector after the accreditation of IMPRA, SAMPRA purported to also collect for non-SAMPRA members, alternatively, that it is/was legally competent to collect for all sound recording repertoire used by music users. Based on this misrepresentation of its repertoire, SAMPRA has to surrender that portion of royalties collected that is attributable to the use of IMPRA repertoire, as some of the repertoire purportedly licensed by SAMPRA since IMPRA's accreditation, belonged to IMPRA members. IMPRA cannot, as a matter of law, demand another payment of a royalty from music users that have already paid SAMPRA for the use of IMPRA repertoire. Such music users are deemed to have discharged their obligations for payment of needletime royalty.
3. IMPRA attempted to engage with SAMPRA to resolve this issue. SAMPRA insists that it only collected for its members. However, SAMPRA persists with its erroneous claim, in writing, to music users, informing them that it represents "99,99%" of

repertoire. SAMPRA argues that it has no mandate to collect for non-members of SAMPRA, hence its insistence that whatever it collected belongs only to SAMPRA members - thereby excluding IMPRA and others from royalties collected from commercial users of music.

4. IMPRA has found in various meetings with commercial users of music sound recordings, that they labour under an impression that they have discharged all their needletime obligations by paying SAMPRA. IMPRA continues to engage with commercial users of music sound recordings to correct this perception.
5. In view of the challenges created by SAMPRA's conduct, IMPRA has travelled the length and breadth of the country to manually collect mandates from its members to improve its database. IMPRA has furthermore submitted a formal complaint with CIPC in connection with SAMPRA's conduct in communicating misleading information to users, i.e. that SAMPRA represents "99.99%" of the repertoire utilized by music users.

COLLECTIONS FROM SABC

6. As a result of various engagements (dating back to 2016), between SABC on the one hand and IMPRA and SAMPRA on the other, the SABC provided both Collecting Societies with the following information, to calculate the Societies' relative shares of needletime royalties:
 1. Music usage reports for the period 2014/2015 for 18 SABC radio stations; and
 2. Reports for each of the said 18 radio stations reflecting relative percentages of music played, versus e.g. adverts, news, sports and traffic.
7. The SABC hosted both Collecting Societies in a joint meeting to discuss the process to be followed in apportioning royalties between the two Collecting Societies. The SABC requested both Collecting Societies to submit their respective repertoires and

membership lists, in order to assist SABC with determining the royalty share-split between IMPRA and SAMPRA.

8. The SABC received the respective repertoire lists of SAMPRA and IMPRA, and the SABC provided SAMPRA and IMPRA with Music usage reports for the period 2014/2015.
9. The SABC employed a SQL Database to track particular spins (songs) relating to a particular artist and record company, and as administered by a particular collecting society. The SQL database was used to manage and separate data comprising of the artists, titles (songs), record companies and collecting societies.
10. Spreadsheets of the net revenue of the SABC per station as approved by SABC accountants were supplied. (The net revenue per station were extracted from SABC SAP System which was audited by AGSA. The spreadsheet provided reflected the net broadcasting revenues (as defined in the Supreme Court of Appeal ruling on the rate for needletime royalties for commercial radio stations), of all the various radio stations.
11. Instances of dual membership in both Collecting Societies were identified. Dual membership queries were resolved by SABC in consultation with both Collecting Societies, resulting in a consolidated list. The Collecting Societies in the consolidated list had previously identified which artist are affiliated to them in cases of dual membership. Once the spins were calculated for the artists who appeared to have dual membership, they were allocated to the correct Collecting Society. A consolidated list of the dual members was sent by SAMPRA to SABC on behalf of IMPRA and SAMPRA.

THE MEETING ON 14 NOVEMBER 2017

12. On completion of the recalculation of the royalty allocation, the SABC met with SAMPRA and IMPRA on 14 November 2017 to explain the method informing the calculation of the 2014/2015 royalty split. The SABC used the following information from the two societies to assist the SABC in its assessment of the split:

1. Repertoire from SAMPRA;
2. SABC Analysis of 2014/2015 from SAMPRA;
3. Membership Main Master List from IMPRA;
4. Claimed Membership from 2014 and Authenticated Mandates from IMPRA; and
5. information in line with the SABC generated music usage reports for the 18 radio stations.

13. The findings/results of the SABC after running the spins or counts were that:
 - 13.1 IMPRA Repertoire constituted 75% of the 2014/2015 music usage report of the SABC; and
 - 13.2 SAMPRA Repertoire constituted 25% of the 2014/2015 music usage report of the SABC.

14. The SAMPRA delegation rejected the outcomes and left the meeting.
15. IMPRA invoiced the SABC on a non-VAT basis for the payment of R16, 955 955.44 based on the SABC analysis.
16. It is not known whether SAMPRA ever invoiced SABC in this matter.

ARBITRATION

17. It is alleged in the recent SAMPRA statement that “(i)n November (2019), IMPRA refuses to sign the arbitration document”.
18. IMPRA’s unwillingness to sign the said arbitration agreement was informed by the fact that the manner in which the dispute was defined by SAMPRA, did not succinctly address the question of the percentage of SABC needletime royalties that should be paid to IMPRA and SAMPRA respectively. IMPRA had proposed alternative wording to better define the issues, but this was not accepted by SAMPRA.
- 19.

CONCLUSION

20. The IMPRA Board finds it regrettable that there appears to be an unwillingness to find common ground in addressing needletime royalties payable by music users who use both IMPRA and SAMPRA repertoire, and trust that common sense will prevail.
- 21.

Yours sincerely,

The IMPRA Office



Exec Director.

Dated 13th March 2020