



Broadcast Portfolio Committee - AGM Report

Video and Sound Recording Rights

Background

Income from the broadcast and public performance of music videos and recorded music offer the local music industry a crucial source of revenue.

To ensure that our constituents get their rightful share of this income, AIRCO prioritised two major initiatives, the first of which was to secure an agreement with the SABC to pay our members royalties for usage of their music videos.

The second was to research various local and international collective licensing regimes to determine an appropriate model that would best administer our members' recorded music rights and distribute public performance and broadcasting royalties to owners and performers, referred to in local industry circles as "Needletime Royalties". To this end, we consulted with our international affiliate WIN and our counterparts around the world and engaged in discussions with local collection societies SAMPRO, SARRAL and SAMRO.

Owners' entitlement to be paid for the broadcast and public performance of their recorded music was repealed from the Copyright Act in 1965, resulting in a significant loss of income for record companies and performers. This right was re-instated in 2002, but it took a further 4 years before regulations governing the composition, rules and operations of collecting societies were published.

To put the earnings potential from Needletime into perspective, in 2006 3,000 hours of terrestrial TV programming generated revenue of R12 million for the music industry whilst 200,000 hours of programming on radio, 30 billion hours of consumer entertainment, generated zero income! This is about to change, opportunely at a time when traditional revenue streams continue to decline internationally and when sales of local music are showing signs of levelling off.

Before Needletime Royalties can be effectively distributed however, industry stakeholders need, amongst other things, to determine usage tariffs and an acceptable basis for performers to share royalties, both challenging processes.

Flaws in the regulations have made the potential for conflict amongst stakeholders worse. In AIRCO's view, practical problems arising from the implementation of regulations can best be addressed by consulting all parties with a direct interest in recorded music and through a unified negotiation strategy.

Such an approach would, to a large extent, not only neutralize the weak regulations but also minimize other challenges the industry faces with regards the licensing, collection and distribution of Needletime rights and revenues. AIRCO remains committed to seek

positive solutions to what is essentially the greatest opportunity available to South African music today.

Video and Sound Recording Rights Continued

Current Status

To achieve these stated objectives, in the past 12-months AIRCO has engaged in discussions with SABC, SAMPRA, SAMRO and DTI, the outcome of which can be summarized as follows:

SABC

We've agreed in principle with the SABC to sign a blanket licence that will grant the national broadcaster the right to use of our members' music videos at a predetermined rate. We're hopeful that the terms of this deal will be concluded before the end of year and we will then adapt this usage tariff as the basis for our negotiations with e-TV and the pay channels.

SAMPRA

Given AIRCO's view that owners of recorded music need to implement a unified negotiation strategy, we initially approached the South African Music Performance Rights Association ("SAMPRA").

It soon became evident however that SAMPRA and AIRCO disagreed in principle on the expediency of a single collection society for all owners and performers and that the terms of SAMPRA's accreditation precluded it from representing any rights owner who is not a member of RiSA.

SAMPRA also took offence to an opinion paper AIRCO submitted to WIN in which our views on past and proposed licensing practices in South Africa were outlined.

Notwithstanding the feud that developed, SAMPRA agreed to create a mechanism which would enable it to get around regulations governing its accreditation and offer AIRCO members a solution to collect and administer Needletime income without requiring us to join either RiSA or SAMPRA. However, this service agreement was conditional on AIRCO issuing a retraction of certain 'defamatory statements' it made in its position paper with regards to RiSA's past video licensing practices.

Initially AIRCO decided not to compromise its stance and rather seek an administrative deal with SAMRO. (See below) Subsequently, at the request of the RiSA board, AIRCO decided to 'clear the air' once and for all and issued a qualified retraction of the sensitive areas raised in its opinion paper. The 'retraction' was accepted by the RiSA board.

SAMRO

We had several meetings with SAMRO, which was also in the process of applying for Needletime collection society accreditation at the time, and agreed in principle that the organisation would provide AIRCO with a service agreement to collect and distribute Needletime revenue accruing on the broadcast and public performance our members' recorded music.

SAMRO subsequently opted to apply for performers' rights accreditation only rendering it unable to license on behalf of owners. SAMRO has also initiated talks with SAMPRA concerning its performer members.

SAMPRA (Second phase)

With SAMRO no longer an option, the only practical way forward for AIRCO was to resume negotiations with SAMPRA for a formal service agreement to licence and administer of our members' Needletime rights.

As mentioned earlier in this report, SAMPRA's accreditation restricted it to negotiate license agreements with broadcasters and other users on behalf of RiSA members' sound recordings. However, the Companies Intellectual Property Registration Office ("CIPRO") has very recently indicated that a change of policy might be in the pipeline in terms of which SAMPRA will be allowed to collect money from users on behalf of all owners. It appears that the licensing of AIRCO members' recorded music will not be an issue.

DTI

In its meeting with the DTI, AIRCO pointed out that it would not be viable for multiple collection societies to set up their own administrative infrastructures and that all owners need to be represented in one licensing model. Ultimately, a benign monopoly is more efficient in collective licensing and distribution of Needletime income than competing societies are.

CIPRO now seems to have accepted this principle and AIRCO assumes that its discussions with DTI in this regards helped contribute to this change in its position.

Benefits of working with SAMPRA

By concluding a full service agreement with SAMPRA for the collective licensing of AIRCO members' sound recordings, we will have succeeded in our mission to secure an independent and viable solution for the effective administration and distribution of Needletime earnings for our members.

This collective agreement will ultimately be between PRM – a collection society for rights owners and performers being mentored by AIRCO (see below) - and SAMPRA.

By negotiating a seat on SAMPRA's Distribution Committee, we'll strive to ensure complete transparency in respect of the collection and distribution of such revenues and seek appropriate access to decision making processes for all owners of recorded music.

We'll also attempt to encourage changes from within, and to this end AIRCO will continue to contest any matter arising that is not in the best interest of the independent music sector or any conduct that is potentially unlawful in terms of competition law, particularly relating to copyright licensing business.

Should issues such as the repatriation of needletime revenues to North American copyright owners and the establishment of a mandatory social responsibility fund become an issue, we'll motivate AIRCO's point of view with the SAMPRA and RiSA Board and others.

PRM

As previously stated, AIRCO believes that the collection and distribution of Needletime revenues should ideally be outsourced to a single society, representing owners and performers - irrespective of affiliation.

This society would function independently and be governed and administered according to universally accepted fair and equitable standards, free from the direct control of any organisation or group of rights owners.

To this end AIRCO is mentoring an application for the formation and accreditation of a collection society – with the provisional name Performance Rights Management (“PRM”) - to administer and distribute needletime royalties on behalf of owner and performer members. We have spoken to CIPRO about our pending application and are hopeful that PRM will be accredited by the end of the year.

PRM will outsource the administration and distribution of its members’ needletime rights and revenue, negotiating services from SAMPRA and SAMRO as required.

In the meantime, AIRCO plans to develop a practical solution for members requiring assistance in registering their recorded music with ISRC identification. The ISRC is the international system for the identification of sound recordings and music videos. Each ISRC is a unique identifier which can be permanently encoded into a sound recording or music video. Encoded ISRCs can provide the means to automatically identify recordings for revenue payments. RiSA, on behalf of the IFPI, is the appointed sole agency for issuing ISRCs in South Africa.

This will be the first step in establishing a repertoire database which will register the details of member record companies’ sound recordings and play a vital role in PRM’s distribution process. AIRCO’s digital committee is currently investigating the SAMPRA meta-data specification requirements in order for its members to be included onto the SAMPRA database. Members are to be contacted in this matter during February

NAB

The National Association of Broadcasters (“NAB”) and SAMPRA are currently engaged in a dispute concerning the determination of Needletime royalties. In the absence of an agreement between broadcasters and copyright owners, the Copyright Act provides that specific matters may be referred to the Copyright Tribunal.

The NAB has applied to the High Court for an order to determine whether the Copyright Tribunal has in fact jurisdiction to hear and determine an application brought to it in respect of needletime royalties and to bring an application for substituted service. As and when it has been determined that the Copyright Tribunal has the necessary jurisdiction, then if it has had relief from the court authorizing it to do so, the NAB will embark on notifying all interested parties of the substituted service order to be effected in a lengthy print and radio campaign.

Only then will the NAB apply to the Copyright Tribunal to establish the amount and date from when royalties are to be paid. In the meantime the NAB contends that no payment becomes due to the owner of a sound recording until agreement has been arrived at.

SAMPRA’s response to NAB’s Declaratory Order

SAMPRA has indicated that it will oppose the NAB application on the basis that it has no merit and because it views the process is a further tactical response to delay the commencement of payment of royalties. It has lodged an application to have the needletime tariff determined by the Copyright Tribunal and have broadcasters make payments to an escrow account pending resolution on the broadcast tariff royalty.

AIRCO supports SAMPRA’s interpretation of section 9A of the Copyright Act which states that if a broadcaster elects to exercise its right to broadcast a sound recording, then a royalty immediately becomes due to the owner of the sound recording. We have also

confirmed our support for the broadcast tariff SAMPRA is proposing and the principle that Needletime royalties should be shared equally between performers and owners.

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Local Content

Background

Concerned that much of the content played on radio and TV is international repertoire, AIRCO prioritised the improvement of local content usage by South African broadcasters as a matter deserving urgent attention.

Whilst recognizing that ICASA is the legitimate platform for negotiating improved content quotas, AIRCO first used its discussions with broadcasters to try and balance out an equation with sensitivity towards local content.

We met with the SABC, initially as part of an industry task team, to discuss areas of concern, including improved local content opportunities, transparency in play-listing procedures, reporting of airplay, free interview opportunities for local artists, payola etc.

The public broadcaster assured us of its commitment to listen to record companies' suggestions on ways to improve local content and during our monthly meetings SABC informed AIRCO of its plans to grant free interviews for local artists and to implement a new look local content policy that far exceeds ICASA prescribed quotas.

Current Status

SABC's Head of Group Strategy formally announced the national broadcaster's new local content programme at MOSHITO 08, confirming its commitment to improving local music quotas over a three year period. From 2008, the minimum quota of South African music on Public Broadcast platforms will be 60% increasing to 65% in 2009 and 70% in 2010. On Commercial Services – like Metro and 5fm – the quota would be set at 35% in 2008, 40% in 2009 and 45% in 2010.

Also encouraging is SABC's new music policy emphasis on regional programming, with each service encouraged to play more music recorded in the language and customary genres of the audience it serves.

Unfortunately, the new programming policy is restricted to radio for the time being and TV remains an area of concern for the local music industry. As more digital regional TV services are licensed, hopefully opportunities to exposure local music will improve, especially in genre's currently being marginalized on SABC's national TV services.

AIRCO has yet to engage with ICASA on behalf of the independent music sector, lobbying for pressure to be put on TV channels, and radio where necessary, to increase opportunities for local music. Increased exposure for independently owned music will ensure our constituency receives improved benefits from the copyrights it represents.

The DAC has assured us of its support in this endeavour and, where possible, to petition the Department of Communication, ICASA and broadcasters for improvements which will generate additional income for the local music industry and for our members.

Improved transparency in play listing

SABC has committed itself to making usage reports available to all rights owners detailing videos played on its various channels. Its Head of Group Strategy is looking into the possibility of SABC also making radio playlists available. AIRCO is in the

process of concluding a deal with a monitoring agency to publish airplay of our members' recorded music and videos online on a cost effective basis.

Broadcast Chair: Updated as at 11 February 2009