



**COMPLIANCE, COPYRIGHT ACT
AND PERFORMERS'
PROTECTION ACT
part 1**



In terms of amendments to the Copyright Act and the Performers' Protection Act, music users such as broadcasters, restaurants, sport stadiums, malls, gyms, hairdressers, retail outlets etc, may not broadcast, diffuse and/or communicate to the public any CDs, cassettes and other sound recording carriers, without payment of a royalty to the copyright owner of the sound recording. The obligation to pay a royalty is a statutory obligation. In order to ensure strict compliance with International Auditing Standards, trainee accountants and chartered accountants must ensure compliance by their clients of the required payment of royalties to SAMPRO. This article is the first in a series of two on the topic of collective licensing of music. The purpose is to assist members of the accounting profession to gain a better understanding of the topic so that they are, in turn, able better to assist their clients to ensure strict compliance with the Copyright Act and Performers' Protection Act.

Collective licensing – an introduction

The French playwright, de Beaumarchais, is credited with being the first person to give expression to the idea of collective rights management. He was apparently the driving force behind a meeting of 22 famous authors on financial matters. The meeting turned into a debate on the subject of collective protection of rights and resulted in the creation of the first collective rights management body.

Between the time of Beaumarchais and the early 20th century, the protection of copyright was essentially concerned with regulating the use of physical products, e.g. sheet music and literary texts. The volume of printed works was relatively small and, as a result, right holders could deal with licensing activities and royalty calculations on an ad hoc basis. The advent of radio broadcasting in the 1920s changed the copyright licensing landscape in a fundamental way for both right holders and users. Right holders found the costs associated with individually monitoring and licensing usage prohibitive,

while broadcasters were faced with the prospect of concluding separate contracts with thousands of copyright owners. The only practical (and economically viable) solution to these challenges was to be found in the collective administration of rights.

At approximately the same time, consumer-targeted recordings of musical works on sound carriers were released into the market. At the beginning of the 21st century, the principle of the administration of copyright on a collective basis has become widely accepted.

What is a collecting society?

The term "collecting society" is a bit of a misnomer, because it implies that the organisation does little more than collect money. A more accurate description would be "an institution, mostly founded by a certain category of copyright owners, which will assert collectively the rights of its members to grant the copyright authorisation for certain uses of their works and which will collect and allocate the corresponding royalties."

Collecting societies administering different rights

The first distinction, which must be drawn, is between the copyright that vests in a sound recording and the copyright that vests in a musical work. The copyright owner of the musical work (or composition) is the composer; that is the person that wrote/composed the work. The copyright owner of a sound recording is the person that paid for making the recording; this is the record company. Record companies range from large multinational companies to sole proprietors. Separate collecting societies exist for musical works and sound recordings. SAMPRO has been accredited by the Department of Trade and Industry's Companies and Intellectual Property Registration Office (CIPRO) as a registered collecting society that represents all members of RiSA – the Recording Industry of South Africa. RiSA is the internationally recognised representative association of all South Africa's leading record companies, and has more than 800 members that collectively comprise more than 95% of the South African music recording industry.

South African businesses have become accustomed to making payment of a licence fee to SAMRO. There is no connection whatsoever between SAMRO and SAMPRO. The SAMRO payment only covers the copyright in the underlying musical work – the composition itself – and is not to be confused with the payment due to SAMPRO for the recorded performance of the underlying musical work. The SAMRO payment is not shared in any way with the owner of the sound recording, who has invested in the making of the sound recording, or the performer whose performance is embodied in the sound recording.

Under the amendments to the Copyright Act and the Performers' Protection Act in 2002, copyright owners of sound recordings and performers will now also derive benefit from the broadcast, diffusion (e.g. music-on-hold on a switchboard), and communication of their sound recordings in any public or commercial environment by a third party user in the course of such user's commercial or business activities, for example, background music played in a retail outlet or restaurant. A payment to SAMRO is a royalty that is intended to go to the composer of a song that is played. A payment to SAMPRO, is a royalty that goes to the artist that performs that song and to the record company that has invested in the recording of that song by that artist.

Historically, collecting societies only administered the copyright in musical works on behalf of composers and were split between performing rights organisations on the one hand (e.g. SAMRO), and mechanical rights organisations on the other (e.g. SARRAL). Performing rights organisations administer the broadcasting, diffusion and public performance rights to composers, whereas mechanical rights collecting societies administer the reproduction (or copying) rights of composers. Worldwide, the trend is for collecting societies administering musical works, to combine the functions that were previously administered separately. SAMRO and SARRAL now both administer performing and mechanical rights. [asa](#)

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