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By email: gm@fedhasa.co.za; rema@fedhasacape.co.za; nationalchair@fedhasa.co.za

RE: FEDHASA ENQUIRY ON LICENSING OF HOTEL TV SETS

1. Background

SAMRO

- 1.1. SAMRO is a non-profit, non-governmental organisation whose primary mandate is the administration of the intellectual property (“IP”) rights afforded to authors and copyright owners/holders in terms of the Copyright Act 98 of 1978 (the “Act”).
- 1.2. SAMRO's primary role is administering the broadcast rights and public performance rights (“IP rights”) in respect of its members’ musical works and it functions as a collecting society through the mandate of its members to distribute the licence fees it collects from music users to its members in the form of royalties.
- 1.3. SAMRO administers these IP rights from each of its members by means of a written and signed deed of assignment, assigning the IP rights in a musical work from the member to SAMRO, which grants to SAMRO the sole and exclusive right to control, administer, make use of, exploit, commercialise, license, or enforce the relevant IP Rights on behalf of its members.
- 1.4. SAMRO members are authors and rights holders of the copyright in musical works and represents:
 - 1.4.1 composer of the music in a song;
 - 1.4.2 the lyricist of the words in a song; and
 - 1.4.3 the publisher of the song, in so far as the composer and/or lyricist has entered into an agreement with a publisher in respect of the musical work.
- 1.2. SAMRO represents the past and future rights of its local members in respect of their musical works and the musical works of international authors and their publishers from around the world by way of reciprocal representation agreements entered into with similar international organisations. Thus the repertoire that SAMRO represents is forever growing and changing by the second, as and when works

are authored and notified to SAMRO and (even without SAMRO's immediate awareness) its affiliated societies around the world.

1.2. SAMRO is governed by the Companies Act 72 of 2008 and its Memorandum of Incorporation.

2. SAMRO's Foundations in the Copyright Act

2.1. Section 2 of the Act relates specifically to literally (the words in a song - the lyrics) and musical works (melody)¹.

2.2. In terms of section 6² of the Act, SAMRO's members, as copyright owners, have the exclusive right to reproduce and broadcast or authorise the reproduction and performance of copyright protected works in any form which right, as explained above, has been assigned to SAMRO for administration. Accordingly, the performance and reproduction of our members' musical works without a license agreement from us constitutes a direct breach of the exclusive rights granted under the Act.

2.3. Songwriters and publishers assign their exclusive rights to SAMRO in terms of Section 22³ of the Act, namely, the exclusive rights as set out in Section 6 of the Act.

2.4. Consequently, in the event that an entity uses a musical work that is protected by copyright and no royalty is paid to SAMRO for said use, the music users actions will amount to copyright infringement⁴ in terms of the Act and shall be guilty of an offence and liable to pay a fine or imprisonment⁵, dependent on whether the infringer is a first offence or habitual infringer.

3. Points Of Clarity

¹Sec 2 - Works Eligible for Copyright - (1) Subject to the provisions of this Act, the following works...shall be eligible for copyright- **(a) literary works; (b) musical works;** (c) artistic works; (d) cinematograph films; (e) sound recordings; (f) broadcasts.

² Sec 6 - Nature of copyright in literary or musical works. Copyright in a literary or musical work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic: (a) Reproducing the work in any manner or form; (b) publishing the work if it was hitherto unpublished;(c) performing the work in public; (d) broadcasting the work;

³ Sec 22 - Assignment and licences in respect of copyright. (1) Subject to the provisions of this section, copyright shall be transmissible as movable property by assignment, testamentary disposition or operation of law. (2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the term of the copyright, or to a specified country or other geographical area. (3) No assignment of copyright and no exclusive licence to do an act which is subject to copyright shall have effect unless it is in writing signed by or on behalf of the assignor, the licensor or, in the case of an exclusive sublicense, the exclusive sublicensor, as the case may be.

⁴ Sec 23 – Infringement - (1) Copyright shall be infringed by any person, not being the owner of the copyright, who, without the licence of such owner, does or causes any other person to do, in the Republic, any act which the owner has the exclusive rights to do or to authorize. (3) The copyright in a literary or musical work shall be infringed by any person who permits a place of public entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work: Provided that this subsection shall not apply in a case where the person permitting the place of public entertainment to be so used was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of the copyright.

⁵ Sec 27 - Penalties and proceedings in respect of dealings which infringe copyright - (3) Any person who causes a literary or musical work to be performed in public knowing that copyright subsists in the work and that performance constitutes an infringement of the copyright, shall be guilty of an offence.

3.1. Licensing of Hotel TV sets

SAMRO is required to license any business which uses works which are part of its repertoire and this would include international repertoire since SAMRO has bilateral agreement with just over 99% of the world Collective Management Organisations (CMO's). In terms of Section 23(1) of the Act, copyright is infringed by any person who, without the licence of the owner "...does or causes any other person to do ... any act which the owner of copyright has the exclusive right to do or to authorise." One of the exclusionary acts in relation to musical works and literary works, is that set out in Section 6(c) of the Act, the right to perform the work in public.

A further important aspect of Section 23(1) is that it is not only the doing of the act, without the copyright owner's authority that would constitute copyright infringement but, in addition, causing someone else to infringe copyright would also constitute copyright infringement.

Therefore, since the TV sets in the hotels room play TV shows, adverts or movies which also include production music (mood music) with the copyright owned by the members we represents, than it follows that a license fee is to be paid for each TV set.

3.2. Licensing Cost

Please note that SAMRO understands that hotels are running a business and we are invested in them being successful and profitable as we have insured that the tariff levied for a TV sets in reasonable.

The current cost for one TV set is,

- R 125,62 (Excluding VAT) – For a year
- R10,46 (Excluding VAT) – Month
- R 0,35 (Excluding VAT) – Day

4. **Benefits of a SAMRO license**

- Compliance with the Copyright Act
- Being a good corporate citizen
- Management of risk in relation to infringement suits
- Local and international musicians benefit through royalty payments

5. We look forward to our future engagements with your group on the above.

Yours faithfully

Karabo Senna
General Manager

Per:
(sent electronically, therefore unsigned)