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Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA

**TERMS OF REFERENCE**  
**COPYRIGHT REVIEW COMMISSION TO ASSESS CONCERNS REGARDING COLLECTION**  
**AND DISTRIBUTION OF ROYALTIES BY COLLECTING SOCIETIES**

**A. BACKGROUND**

Due to several concerns and allegations about the collecting societies model that is in place for the distribution of royalties to musicians and composers of music, I, Dr Rob Davies, the Minister of Trade and Industry hereby establish the Copyright Review Commission (CRC) to assess these concerns and allegations. The CRC must assess, provide advice and make recommendations for my considerations. The CRC is only accountable to the Minister of Trade and Industry.

The following are members of the CRC:

Name	Designation on CRC
Judge Ian Farlam	Chairperson
Mr Oupa Lebogo	Member
Prof Musa Xulu	Member
Mr Nala Mhlongo	Member
Dr Jean Swanson-Jacobs	Member
Prof Tana Pistorius	Member

## **B. TERMS OF REFERENCE**

The CRC comprises of six (6) members, and are tasked to conduct their work within the bounds of the following Terms of Reference:

1. Assess the effectiveness of the structure of collecting societies in South Africa, including those that belong to authors, composers, recording companies, musicians/artists and others. CRC should assess, advise and make recommendations on how the collective management of copyright can be improved.
2. Assess the relationship of collecting societies that exist in South Africa to determine the extent and of access in royalties from public and private broadcasters, and how the distribution is done to artists. CRC should assess, advise and make recommendations.
3. Assess the nature of private and public agreements that the radio and TV stations have with local and international collecting societies and assess how royalties are distributed and the pattern of perceiving for local *vis a vis* international rights owners. CRC should assess, advise and make recommendations.
4. Assess the nature and extent of use of music by Mobile Telephony Companies and whether they are paying copyright royalties to rightful owners. CRC should assess, advise and make recommendations.
5. Assess the extent of distribution of royalties and determine the percentages distributed nationally *vis a vis* outside South Africa. CRC should assess, advise and make recommendations.

6. Assess tariffs associated with these licensing agreements. CRC should assess, advise and make recommendations.
7. Assess licensing agreements that all universities, other institutions of higher learning and training institutions have with collecting societies relating to royalties in relation to copyright work/literary work and these royalties are distributed to collecting societies, and further to artists, composers, authors and/or publishers from the collecting societies. CRC should assess, advise and make recommendations.
8. Assess if all the collected money is distributed and assess the remaining money, if any, that is not distributed by collecting societies, e.g. for administration, social pension or for any other purposes. CRC should assess, advise and make recommendations.
9. Assess a sample of contractual relationship amongst collecting societies in the music industry and other users such as hoteliers and places of employment. Determine how these contracts are structured and royalties flowing to artists. CRC should assess, advise and make recommendations.
10. Assess if collecting societies in general, nationally and internationally collect only from their members and/or non-members. In this regard, assess how are royalties of non members treated and distributed, including the effort taken by collecting societies for tracking non members whose royalties are in custody of collecting societies. CRC should assess, advise and make recommendations.
11. Assess in particular how reciprocal agreements in this regime of collecting societies operate. Further assess the reciprocal agreements amongst collecting societies and their counterparts. Determine in this relationship who owns the

“rights”. Are rights alienated to third parties without consent of the owner of the rights CRC should assess, advise and make recommendations.

12. Assess how reciprocal agreements in the copyright regime operate amongst states. Can a state such as South Africa direct how reciprocal agreements should be structured in terms of section 4 of the Performers Protection Act, 1967 M. CRC should assess, advise and make recommendations.
13. Assess contractual relationship amongst artists and big recording companies such as Sony, EMI, Gallo and Universal and publishing houses pre and post the Copyright Amendment Act, 2002 and Performers Protection Amendment Act, 2002. CRC should assess, advise and make recommendations.
14. Assess for the purposes of the needle time royalty if all accredited collecting societies are complying with the Copyright Regulations regulating the administration and distribution of the needle time royalty. In this regard recommend compliance model for good corporate governance of the regime. CRC should assess, advise and make recommendations.
15. Assess contractual relationship amongst artists and independent labels pre and post Copyright Amendment Act, 2002 and Performers Protection Amendment Act, 2002. In this regard assess how distribution is done flowing from these contractual relationships. CRC should assess, advise and make recommendations.
16. Assess how the playing of South African music for those artists and composers that do not belong to collecting societies and as such no reciprocal agreements exist is treated by foreign broadcasters. Determine if any royalty is payable and to who exactly is it payable and how is such royalty treated by the laws of

- various countries where such royalty is collected. CRC should assess, advise and make recommendations.
17. Assess all licenses issued by ICASA to public and private radio and TV stations in relation to music genres. Is there compliance with the terms of the license and recommend how enforcement can be improved. CRC should assess, advise and make recommendations.
  18. Assess in general if all collecting societies comply with the general rules of corporate governance in terms of relevant legislation and the Copyright Regulations 2006 that regulates the administration of the needle time royalty. CRC should assess, advise and make recommendations.
  19. Assess the efficiency of legislation in SA to deal effectively with concerns raised above.

**DR ROB DAVIES**  
**MINISTER OF TRADE AND INDUSTRY**