

NOTICE 69 OF 2009
COPYRIGHT ACT, 1978
COPYRIGHT TRIBUNAL

NOTICE OF REFERENCE UNDER SECTION 9A

To: The Registrar
Copyright Tribunal
c/o Patents Office
Pretoria

1. Take notice that the South African Music Performance Rights Association of Unit 4, 150 Bram Fischer Drive, Randburg, Gauteng (herein referred to as "the Referrer"), hereby refers to the Copyright Tribunal, in terms of section 9A(1)(c) of the Copyright Act,
 - 1.1 the amount of the royalty
 - 1.2 to be paid to the copyright owner for broadcasting any sound recording the copyright in which is protected under section 9(c) of the Copyright Act (herein referred to as "a protected sound recording"),
 - 1.3 by each of the users listed as Respondents 2 – 32 below (herein referred to as "the Broadcaster Respondents"),
 - 1.4 and the copyright in which protected sound recording is owned, or controlled through exclusive licence, or under exclusive sub-licence derived from the owners, by any individual member (herein referred to as "the copyright owner") of the Recording Industry of South Africa (herein referred to as "RISA")
2. The Referrer is a collecting society accredited by the Companies and Intellectual Property Registration Office (CIPRO) in accordance with the provisions of Regulation 3(1)(a) of the Collecting Society Regulations published under Government Notice 517 in the

Government Gazette no. 28894 of 1 June 2006. The Referrer has been accredited to act as a representative collecting society and to administer the rights of copyright owners of protected sound recordings to receive payment of a royalty in terms of Section 9A of the Copyright Act, 1978 on behalf of "an organisation representing 50 or more copyright owners" of protected sound recordings.

3. The organisation on behalf of which the Referrer so acts is RISA, which, as at the date of this notice, represents at least 800 different individuals and entities that are copyright owners in terms of the relevant provisions of the Copyright Act.
4. Neither the Referrer nor any copyright owner is party to an agreement, as contemplated in section 9A of the Copyright Act, with the First Respondent (which is a trade association which represents the Broadcaster Respondents and of which the Broadcaster Respondents are all members), and / or any Broadcaster Respondent in respect of the amount of the royalty to be paid to the copyright owner for broadcasting a protected sound recording. Neither the Referrer nor any copyright owner is party to an agreement, in terms of Section 9A(1)(c) of the Copyright Act, with the First Respondent and / or any Broadcaster Respondent to refer the determination of the amount of the royalty to be paid to the copyright owner for broadcasting a protected sound recording to arbitration.
5. The Referrer has proposed a tariff to the First Respondent and the Broadcaster Respondents for the calculation of the amount of the royalty due in respect of the broadcasting by the Broadcaster Respondents of all protected sound recordings the rights in which are administered by the Referrer on behalf of the copyright owners.
6. The First Respondent, as a trade association that is the representative of the Broadcaster Respondents, has informed the

Referrer that the tariff proposed by the Referrer is not acceptable to any of the Broadcaster Respondents.

7. The Referrer has therefore submitted a reference to the Copyright Tribunal for the determination of the amount of the royalty that is payable to the copyright owner in terms of Section 9A(1)(c) of the Copyright Act, 1978 for the broadcast by each of the Broadcaster Respondents of any protected sound recording the rights in which are administered by the Referrer (herein referred to as "the Referral.")
8. A copy of the Referral (herein referred to as "the Referral Document") has been sent to each of the Broadcaster Respondents. The Referral Document contains a comprehensive explanation of the tariff which is the basis of the calculation of the royalty. A copy of the Referral Document can be obtained from the Registrar of the Copyright Tribunal, or, on written request, from the Referrer.
9. The Referrer has identified four representative parties with a potentially legitimate interest in the determination by the Copyright Tribunal of the royalty that is payable by the Broadcaster Respondents for the broadcasting of protected sound recordings that are administered by the Referrer. These parties are:
 - 9.1 The South African Recording Rights Association Limited (SARRAL);
 - 9.2 The Southern African Music Rights Organisation (SAMRO);
 - 9.3 Creative Workers Union of South Africa (CWUSA); and
 - 9.4 Association of Independent Record Companies (AIRCO).

A copy of the Referral Document has been delivered to each of the aforementioned parties.

10. Notice is also hereby given to any other:
- a. User of protected sound recordings;
 - b. Performer(s) whose performance/s is/are embodied in protected sound recordings; and / or
 - c. Owner(s) or exclusive licensee(s) or exclusive sub-licensee(s) of copyright in protected sound recordings,

as contemplated in section 9A(1)(c) of the Copyright Act, that he/she/they/it can apply to the Copyright Tribunal to be made a party to the Referral proceedings if any such party claims to have a substantial interest in the matter that has been referred to the Copyright Tribunal, namely the determination of the amount of the royalty to be paid to the copyright owner by the Respondent Broadcasters for broadcasting protected sound recordings that are administered by the Referrer.

Any such application must be made to the Copyright Tribunal within forty five calendar days of the date of the publication of this advertisement.

11. The Broadcaster Respondents are all commercial radio broadcasters in the sense of deriving a substantial percentage of their respective revenues from the sale of advertising and sponsorship time on their respective stations. Attention is drawn to the fact that the royalty tariff that has been proposed by the Referrer for the broadcast of protected sound recordings by the Broadcaster Respondents is not proposed to apply in respect of a radio station that is licensed by the Independent Communications Authority of South Africa (ICASA) as a community radio station and that does not derive a substantial percentage of its revenue from the sale of advertising and sponsorship time.

12. Attention is drawn to the fact that the royalty tariff that has been proposed by the Referrer for the broadcast of protected sound recordings by the Broadcaster Respondents is not proposed to apply to performers whose performances are embodied in sound recordings if the copyright in any such sound recording is not owned, or controlled through exclusive licence, or under exclusive sub-licence derived from the owners, by any individual member of RISA. The Performers affected by the Referral are limited to those performers whose performances are embodied in sound recordings the copyright in which is owned or controlled by any individual member of RISA.
13. All communications regarding this Referral should be addressed to the Referrer, whose address is as under:

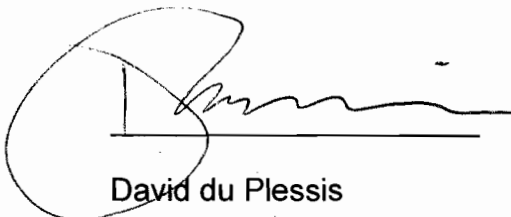
Physical Address:

Unit 4, 150 Bram Fischer Drive (Entrance in Republic Road)
Randburg
2194

Postal Address:

PO Box 367
Randburg
2125

Signed:

A handwritten signature in black ink, appearing to be 'David du Plessis', is written over a horizontal line. To the left of the signature is a large, loopy circular mark.

David du Plessis

Status of signatory - duly authorised by a resolution of the board of the Referrer dated December 11th 2008.

Date: January 15th 2009

The Respondents and Interested Parties Identified by the Referrer.**1. National Association of Broadcasters: First Respondent**

Building no. 2
Albury Office Park
Cnr Jan Smuts Avenue and Albury Road,
Dunkeld West,
Johannesburg

In its capacity as a trade association representing the Broadcaster Respondents and of which the Broadcaster Respondents are all members

2. South African Broadcasting Corporation:

Corner Henley and Artillery Roads
Auckland Park,
Johannesburg

in its capacity as the proprietor of the following licensed commercial radio station broadcasters, which are the Second to Nineteenth Respondents:

- 1) 5FM
- 2) CKI Stereo
- 3) Good Hope FM
- 4) Radio 2000
- 5) Lotus FM
- 6) Metro FM
- 7) Ikwekwezi FM
- 8) Lesedi FM

- 9) Ligwalagwala FM
- 10) Motsweding FM
- 11) Munghana Lonene
- 12) Phalaphala FM
- 13) Radio Sonder Grense
- 14) SAFM
- 15) Thobela FM
- 16) Umhlobo Wenene
- 17) Ukhozi FM
- 18) XK FM

3. Kagiso Media Limited:
First floor, Kagiso House
16 Fricker Road, Illovo Boulevard
Illovo,
Johannesburg

in its capacity as a proprietor of the following licenced commercial radio station broadcasters which are the Twentieth to the Twenty Third Respondents:

- 1) Jacaranda 94.2
- 2) East Coast Radio
- 3) Heart 104.9
- 4) iGagasi 99.5

4. African Media Entertainment Group Limited:

Unit Block A, Oxford Office Park

No. 5, 8th Street
Houghton Estate,
Johannesburg

in its capacity as the proprietor of the following licenced commercial radio station broadcasters which are the Twenty Fourth and Twenty Fifth Respondents:

- 1) Radio Algoa
- 2) OFM

5. Primedia (Pty) Limited:

Primedia Place
5 Gwen Lane
Sandown,
Sandton

in its capacity as a proprietor of the following licenced commercial radio station broadcasters which are the Twenty-Sixth to Twenty-Ninth Respondents:

- 1) 94.7 Highveld Stereo
- 2) 94.5 KFM
- 3) 567 Cape Talk
- 4) Talk Radio 702

6. Thebe Convergent Technologies (Pty) Limited:

Thebe House
166 Jan Smuts Avenue

Rosebank,

Johannesburg

in its capacity as the proprietor of Kaya FM (Pty) Ltd, a licenced commercial radio station broadcaster, which is the Thirtieth Respondent;

7. Classic FM SA (Pty) Limited:

6th Floor, Jorissen Place

66 Jorissen Street

Braamfontein,

Johannesburg

in its capacity as the proprietor of Classic FM, a licenced commercial radio station broadcaster, which is the Thirty First Respondent;

8. Yired (Pty) Limited:

Regents Place, Office 1A

First Floor, Cradock Avenue

Rosebank

in its capacity as proprietor of YFM, a licensed commercial radio station broadcaster, which is the Thirty Second Respondent.

9. SARRAL

Suite 6, Heerengracht

87 De Korte Street

Braamfontein

in its capacity as an interested party to this Referral;

10. SAMRO
SAMRO House
73 Juta Street
Braamfontein

in its capacity as an interested party to this Referral;.

11. CWUSA

4th Floor, COSATU House
Corner Leyds and Biccard Street
Braamfontein,

Johannesburg

in its capacity as an interested party to this Referral;.

12. AIRCO

85 1st Avenue
Melville,
Johannesburg

in its capacity as an interested party to this Referral.