Title: A review of and response to the "SAMRO CEO response to Media Reports" (http://www.samro.org.za/news/articles/samro-ceo-response-media-reports)

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Date: 5th April 2018

Context: Ms Hlengiwe Mhlaba

SAMRO CEO Response To Media Reports	**Response to SAMRO CEO Response To Media Reports**
It is with great dismay that I followed the various discussions about SAMRO in the media over the weekend, following the publication of the City Press article on Sunday 1 April 2018	When an NPC behaves abominably, egregiously and reprehensibly over a long period of time and visits all manner of dishonesty to an iconic writer, and the NPC's behaviour is exposed, one imagines that there are strong feelings at the NPC. In this instance the SAMRO CEO has tempered the feeling to one of 'dismay'. The matter concerning Ms Mhlaba and SAMRO arose in February 2017 when Ms Mhlaba issued a special power of attorney to audit and investigate SAMRO. Since the SAMRO CEOs arrival in July 2017, the SAMRO CEO has been familiar with all aspects of SAMRO unlawful behaviour concerning Ms Mhlaba, arising from investigation, which was addressed in the City Press article on Sunday 1 April 2018. There was nothing new

The inflammatory article by journalist Charl Blignaut raised a number of deeply concerning allegations as raised by Ms. Hlengiwe Mhlaba’s consultant Graeme Gilfillan about the membership and distribution rules of SAMRO	The plain language of the article advises "*But after Mhlaba hired copyright lawyer Graeme Gilfillan to investigate her royalty payments, the real extent of her losses came to light*." To avoid acknowledging to SAMRO members and others that Ms Mhlaba has hired a copyright lawyer, a highly skilled multi-jurisdictional copyright lawyer and forensic expert at that, which the SAMRO CEO knows full well, the SAMRO CEO refers to the copyright lawyer as a "consultant", an unqualified assumption that a bears no shred of truth in fact. Omitted from the SAMRO CEO response is that the "deeply concerning allegations" are in fact "findings" arising from special power of attorney investigation and audit of all information concerning Ms Mhlaba, which information was subsequently supplied by SAMRO and analysed. Using omission, a manner that characterizes the SAMRO CEO's response and mis-direction throughout, the findings are referred to as "allegations".

	It is apparent that the interview was with Ms Mhlaba which she opens up as follows: *"In a tell-all interview, award-winning gospel powerhouse Hlengiwe Mhlaba told City Press that, over a decade, R8.5 million of her royalties was stolen by fellow gospel artist Sipho Makhabane, her former producer and manager. Makhabane did not respond to numerous calls, messages and emails sent to him from Tuesday.....Mhlaba discovered that of her 90 songs collecting royalties through Samro, 24 were only paying out 16.7% of what was due to her. Among these 24 songs, all new arrangements of traditional works, are her biggest hits, including Rock of Ages, uJesu Uyalalela and Mhlekazi. The remaining 83.3% was, according to Samro's own database, paid to a mysterious composer called "DP". Mahlaba claims that in the course of 14 albums she has had well over R100 000 taken by DP – on top of the millions Samro paid to Makhabane without her ever formally signing her rights over to him."* Ms Mhlaba refers to what she discovered from the audit and investigation findings, which audit and investigation she had instructed.

As a matter of fact, in 1 500 words the City Press article makes only 2 mentions only of the word "membership" –
One made by Ms Mhlaba's copyright lawyer
"The DP scheme can be tracked, says Gilfillan, back to 1963 when Samro's board began accepting candidate members, its lowest tier of membership, who had no right to vote or attend meetings"
And the other made by SAMRO
"*Ndlovu told City Press that Samro will, this month, begin a national review of its membership practices*"
As a matter of fact, in 1 500 words the City Press article makes NO mention of the term "distribution rules" and makes the following mentions of the following 2 words
• "distribution" 1 mention attributed to SAMRO

"*He said that the 83.3% is still being "written back to distributable revenue for subsequent distributions*"

• "rules" 2 mentions attributed to SAMRO
"*This matter relates to a historical or legacy rule applied not only by Samro but other similar organisation in other territories," claims Ndlovu, saying there is a "view" that the original composer would still be a rights holder. But lawyers say this is not the view of the copyright act……Samro is aware that a number of members wish for its* ***rules*** *and policies around this matter to be changed. However, it would be impractical to address these concerns on a case-by-case basis," says Ndlovu*"

	Axiomatically the article does not concern "allegations……about the membership and distribution rules of SAMRO
It must be recorded that SAMRO is already reviewing the rules in question as part of a far wider policy review because of the clear disharmony between some of our policies and the SAMRO we wish to see going into the future, as well as clear unhappiness over the years from members	It must also be recorded that a review of previous SAMRO CEO corporate and media communications from the past 4 SAMRO CEOs confirms the same verbiage about 1. Reviews being done, on-going or to be done 2. Clear disharmony between SAMROs current and future policies 3. Clear unhappiness over the years In SAMROs Integrated report for 2013 one finds the following:-
	The risks have since been badly managed and in 2018 the unlawful payment of 83.33 cents on every rand of writer income on arrangements of public domain/traditional works continues to this day.

The table below lists the issues that are considered most material to the group's long-term sustainability. These issues have been derived from a consideration of the operational risk register as well as an analysis of the broader trends in industry, both locally and internationally.

Material issue	Risk	Further information
Membership	Possibility of alternative rights collection options emerging	Chairperson, CEO and sustainability reports
Reputation	Negative perceptions about SAMRO affecting membership and revenue	Chairperson and CEO reports
Legislative changes	Business model relies on existing legislation	Chairperson and CEO reports
Cost	Fixed cost base requires revenue growth	CEO and CFO reports
Piracy and revenue	Digital service providers and new distribution channels	CEO report
Licensing	Licensing of community broadcasters not sustainable	CFO report
	Lack of adequate copyright legislation for new media	CEO report
Data integrity	Correct and timely distributions rely on accurate data from users	CEO report
IT systems	Limited internet penetration among members	CEO report
Compliance	Compliance capacity and structure	CEO and governance reports
Customers	Non-payment by licensees	CFO report
Employees	Increased union activity	CEO and sustainability reports

The risks have since been badly managed and in 2018 the unlawful payment of 83.33 cents on every rand of writer income on arrangements of public domain/traditional works continues to this day.

SAMRO did send an extensive response to the City Press journalist before publication but it is disappointing to observe that SAMRO's inputs were largely ignored	SAMRO sent a 4 page response on Thursday 2018/03/29 on 03:28 PM with the sign off of "Have a great Easter break". It appears, that there was no-one at SAMRO to address the queries raised to the SAMRO response on the Friday or the Saturday. Notwithstanding whilst the interview is with Ms Mhlaba with seven mentions of her name, SAMROs Ndlovu is mentioned 6 times - it is thus disingenuous to suggest that SAMRO's inputs were largely ignored
The article, although with many factual inaccuracies, does highlight some of the concerning and outdated policies and practices already identified by the board and management as requiring urgent change at SAMRO and I have been working with the team within SAMRO to do this	SAMRO CEO offers a vacuous and unsupported claim as regards "*many factual inaccuracies*" without offering evidence of a single factual inaccuracy. SAMRO is a 55 year old organization where the "*concerning and outdated policies and practices*" have been, so the records advise, have been repeatedly raised to SAMRO for 2 decades, without result. If "*concerning and outdated policies and practices*" have already been identified by SAMRO the question is raised…….why has there not been action? True to form the SAMRO CEO offers no evidence or detail to support the claim "*I have been working with the team within SAMRO to do this*"

The fact that we need to change and improve certain aspects of the way SAMRO operates is well known and was a key mandate given by the board to me and the executive in July 2017, and was a very clear directive from you, the membership, of SAMRO at the EGM and AGM meetings of October and November 2017	One notes that the SAMRO CEO admits that "*the need to change and improve certain aspects of the way SAMRO operates is well known*". To those who know SAMRO this admission sounds like the broken record that has been running for two decades. The fact that the CEO Response to the Media had to be issued is proof positive that the need to change, remains. In the past 9 months nothing has changed and SAMRO'S innate deeply seeded knee-jerk reaction to defend the indefensible still operates.
Over the last 9 months, we have already started on this path to change:	claim noted
• We have created a specific department to deal with undistributed royalties (held as UNDOC) to prioritise and expedite the distribution of these funds	Great claim and the priority of every previous CEO - but as before an empty claim without a department name, a contact, a number, an email and a departmental capacity to trace - there is no expediting the distribution of funds without confirming the identity of who to pay the funds to
• We have also started a full review of all membership rules, including rules relating to board membership.	Great claim and the priority of every previous CEO - but as before an empty claim without detail as to start date, stop date, clarity who is "we" and engagement with members
• The board has undergone an extensive review on its performance (both collectively and individually) and for which a report will be submitted to SAMRO	Laudable action - no detail as to when and as to whether "*available to SAMRO*" includes being available to SAMRO members

• A full investigation is underway with independent forensic investigators to explore the allegations that SAMRO's 2016 investment in a subsidiary company in Dubai was irregular.	The statement clarifies very little about the AEMRO matter and in fact it raises further questions. There is no comfort gained by the notice that a "full investigation is underway" using unnamed "independent forensic investigators" who's only task is to "explore the allegations that SAMRO's 2016 investment in a subsidiary company in Dubai was irregular" Any investment offering "a billion rands" return out of R45 million in vested would classify the investment sight unseen as either a ponzy scheme or a very high risk investment. Assuming for the moment there was no ponzy scheme, for an NPC to invest members' monies in very high risk schemes is prima facie evidence of a collapse in governance and of a board that is unfit to hold seat

	Members would ask why the monies are not paid through to them and further why SAMRO is sitting on member's money in the first place to the extent that it can go and make highly risking investments. Members would further ask why there is no discipline and/or sanction applied to those responsible and would certainly add that none involved should ever have anything to do with financial decisions at SAMRO in the future.
It should be remembered that it was the SAMRO board and management that called an Extraordinary General Meeting (EGM) last to raise the matter of closing the subsidiary.	SAMRO cannot evidence any discussions with members as to the investment of R45 million in Dubai…….this was done in secrecy and a prime parties involved CEO Sipho Dlamini (Mr Dubai…..in the industry at one point) and COO Bronwen Harty suddenly upped and left to Universal allegedly when the investment went south.
We will be holding another EGM in June 2018 to further engage with members on the new rules of SAMRO going forward.	With 14 000 members over a wide geographical South Africa, it is doubtful that anything more than 180 SAMRO members will be able to afford to attend - as before icing SAMRO members out of the process and excluding their involvement. With all communications and documents only issued in English, it is not exactly sure how SAMRO will "*engage with members on the new rules of SAMRO going forward*". If the past is anything to go by, SAMRO will engage with very few of its members

This will include how do members qualify for the various membership tiers, how to qualify for the annual Grant of Rights Payments, the public domain public rules etc	For a 55 year old organization one imagines that this information is known and has been known - however the reference to "public domain rules" raises a red flag….the only rules as regards expiry of the term of copyright are contained in the Copyright Act 98 of 1978 as amended. SAMRO's relationship with the performing right of musical works does not confer SAMRO any right to make "rules" which are not consistent and compliant with said Copyright Act 98 of 1978 or to make rules for rest of the musical work rights which it has no relationship with
So although the matters raised in the City Press are important and relate to the way SAMRO has historically conducted business, it should be remembered that these fall within a bigger review of SAMRO’s operations as a whole.	This is opined as a false and untrue statement as regards the matters raised in the City Press In the first instance the unlawful deduction of monies, guestimated to R1.2 billion over 55 years from and lawfully due to thousands of composer/author SAMRO members presents SAMRO with a class action threat that could denude the organization of every penny it has. This threat, arising from management oversight that is alleged to be wholly irresponsible, is not just ”important”, it is “critical” and a real threat to its very survival. In the second instance saying that this relates “to the way SAMRO has historically conducted business” is to purposefully and knowingly omit that it relates also to the way SAMRO has CUURENTLY conducted business
A review that started in 2017	No start date, end date, team detail, scope detail information is offered or evidenced.

I would like to now address, in this letter, several issues raised in that article: **1. Who or what is DP?** DP is not a person;	The admission is noted however the SAMRO CEO does not clarify as to whether DP is a natural person or nor a juristic person - one assumes for the moment that the SAMRO CEO refers to a natural person as either a composer, author, or both, arranger or adaptor. In SAMRO's database as well as all other CISAC member databases on the CIS-Net system, there is no way in terms of the metadata, to understand or verify whether the name listed is a natural person. The interested parties in a song are noted in the databases as follows:- C Composer (of music) A Author (of Music) CA Composer author AR Arranger (of music) AD Adaptor (of words) E Publisher SE Sub-publisher

Omitted by the SAMRO is that DP is a composer author both in the SAMRO Performing Rights Royalty Distribution Rules as well as in the CIS-Net databases and all other CISAC databases. It is reasonable in the absence of clarity to the contrary to assume that a Composer Author is a natural person
in the SAMRO Performing Rights Royalty Distribution Rules, DP is not mentioned as it appears in the SAMRO works lists, instead "Composer" is, alongside the 83.33% - see below.

SAMRO's default standard Share splits are as follows:-

Category	Type of Work	Rights Holders	Fraction	%
	3. Music Arrangement	Composer	10/12	83.33%
		Arranger	2/12	16.67%
				100.00%
4. Song Arrangement		Composer	5/12	41.67%
		Author	5/12	41.67%
		Arranger	2/12	16.67%
				100.00%
5. Song Revised Lyrics		Composer	5/12	41.67%
		Author	5/12	41.67%
		Sub Author	2/12	16.67%
				100.00%

6. Song Arrangement Revised Lyrics	Composer	5/12	41.67%
	Author	5/12	41.67%
	Arranger	1/12	8.33%
	Sub Author	1/12	8.33%
			100.00%

DP is simply an internal system categorization that is allocated to all public domain works.

This is a false and untrue statement. DP is not "an internal system categorization "
DP is a CA (a composer author in the databases, works lists and statements) it is an interested party in musical and literary works. In Ms Mhlaba's works list, DP is listed as a Composer Author as follows:

CopyrightOw	Role	Name
0002540518	CA	DP
0002540550	AR	MHLABA

The assertion made by the SAMRO CEO here contradicts an earlier email assertion the SAMRO CEO made on 03 October 2017 at 09:59 AM that:
"…DP (this is an unmanipulatable cade used by all CMOs and is assigned by CISAC)."
On Thu 2017/11/16 at 08:43 AM the SAMRO's CEO was advised by email that:
"SAMRO manipulates the IPI number of "DP" internally, which is an Interested Party with the IP Base Number I-001635861-3. If you check, you will find that these are all fake IP's that link up to one "DP" (which SAMRO used for longest time……as many thousands of historical and current work statements confirm) that has the IP Name number 00039657154 . To verify

what I am advising – please do a CIS-Net search for the composer (interested party) called "DP".....and you will find the following:-

Names and Usages

Name Type	IP Name	IP Name Number			Creation	Amendment
PA	**DP**	00039657154			2000-06-19	2006-10-25
	Creation classes : roles list	MW	: LY	MC		
DF	DOMAINE PUBLIC NON IDENTIFIE	00506142687			2006-08-28	2006-08-28
	Creation classes : roles list	MW	: LY	MC		
DF	PUBLIC DOMAIN UNIDENTIFIED	00506142981			2006-08-28	2006-08-28
	Creation classes : roles list	MW	: LY	MC		

If in CIS-Net you do a search on the following work – this is what you find – you will note that DP has the role of a "Composer" – this is through the WID at ASCAP and the arrangement belongs 100% to the composers/publishers

⊞ $TRICKLY $TREETZ VOL. #1 PT. 1 ISWC: T-905.046.821-8 Duration: 01:30:20

Interested Party	IPN#	Role	AP	LP	P-Society	P-Share	M-Society	(Original Title) WID Centre >ASCAP (DOM) M-Share
DP	00039657154	C			NS	0.00%		
DRAYTON ALIBN SHAH EMIR JAHR	00455294635	A			ASCAP	25.00%		
DRAYTON ALIBN SHAH EMIR JAHR	00455294635	AR			ASCAP	25.00%		
DIRTY DOC PRODUCTIONS	00443021897	E			ASCAP	50.00%		

Domestic View

+2WL

And in Nord-Doc - this is through the WID at Nord-Doc and the arrangement belongs 100% to the composers/publishers

⊞ "...AFFLICTIO SPIRITUS"? ISWC: T-000.905.925-9 Duration: 00:23:00

Interested Party	IPN#	Role	AP	LP	P-Society	P-Share	M-Society	(Original Title) WID Centre >NORD-DOC (DOM) M-Share
KAIPAINEN JOUNI ILARI	00087362647	C			TEOSTO	100.00%	NCB	100.00%
DP	00039657154	A			NS	0.00%	NS	0.00%

Domestic View

+2WL

And at the PRS - this is through the WID at Nord-Doc and the arrangement belongs 100% to the composers/publishers

⊞ #ATTLE HYMN OF THE REPUBLIC ISWC: No preferred Duration: (Original Title) WID

Interested Party	IPN#	Role	AP	LP	P-Society	P-Share	Centre >PRS (DOM) M-Society	M-Share
DP	00039657154	C					NS	0.00%
HOWE JULIA WARD	00014475794	A					NS	0.00%
GALLINA JILL C	00045992351	AR					NS	0.00%
SHAWNEE PRESS INC	00028507192	E					PRSforMusic	100.00%

A musical work will be in the public domain if it never had copyright in the first place (like indigenous African music that never "qualified" for copyright under the old copyright framework) or if the copyright has expired (which happens 50 years after the death of the composer as per the Copyright Act.).	The statement is ill-informed, false and untrue with the use of terms that have no standing or meaning in the Copyright Act 98 of 1978 such as:- "*never had copyright*" See below Definitions (5) (e), Ch 1 Sec 2 (b) and Ch 1 Sec 3 (3) "*indigenous African music*" Given that music has been recorded since the late 1800s notwithstanding the various statutes governing since what exactly is meant here is escapes logic and meaning. Unless one wants to question the originality conferred on the musical works and literary works created in every South African language for last century, the phrase has no meaning. To say that the musical works and literary works described as "indigenous African music never that qualified for copyright" is incorrect, untrue and an error "old copyright framework" This is a misnomer with no meaning. South Africa's current Copyright Act came into force in to 1978. The one prior was in 1965 and prior to that 1916 "expired" See below Ch 1 Sec 3 (2)

	The provisions concerning copyright in a musical work are found in the Copyright Act 98 of 1978 as follows:- Definitions (5) (e) For the purposes of sections 6, 7 and 11 (b), a work shall be deemed to be published if copies thereof have been issued to the public Ch 1 Sec 2 (1) (b) 2. (1) Subject to the provisions of this Act, the following works, if they are original, shall be eligible for copyright— (a) literary works; (b) musical works; Ch 1 Sec 3 (1) (a) 3. (1) Copyright shall be conferred by this section on every work, eligible for copyright, of which the author or, in the case of a work of joint authorship, any one of the authors is at the time the work or a substantial part thereof is made, a qualified person, that is— (a) in the case of an individual, a person who is a South African citizen or is domiciled or resident in the Republic;

	Ch 1 Sec 3 (2) (2) The term of copyright conferred by this section shall be, in the case of— (a) literary or musical works or artistic works, other than photographs, the life of the author and fifty years from the end of the year in which the author dies: Provided that if before the death of the author none of the following acts had been done in respect of such works or an adaptation thereof, namely— (i) the publication thereof; (ii) the performance thereof in public; (iii) the offer for sale to the public of records thereof; (iv) the broadcasting thereof, the term of copyright shall continue to subsist for a period of fifty years from the end of the year in which the first of the said acts is done;

		Ch 1 Sec 3 (3) (3) (a) In the case of anonymous or pseudonymous works, the copyright therein shall subsist for fifty years from the end of the year in which the work is made available to the public with the consent of the owner of the copyright or from the end of the year in which it is reasonable to presume that the author died, whichever term is the shorter Ch 1 Sec 3 (4) (4) In the case of a work of joint authorship the reference in the preceding subsections to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person Ch 1 Sec 4 (1) (a) 4. (1) Copyright shall be conferred by this section on every work which is eligible for copyright and which— (a) being a literary, musical or artistic work or a sound recording, is first published in the Republic

		Ch 1 Sec 6 6. 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; (e) causing the work to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the work, and is operated by the original broadcaster; (f) making an adaptation of the work; (g) doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (e) inclusive
The allegation made is that SAMRO has allocated R2billion to the DP category.		The City Press article advised the following *"Gilfillan's findings are being used as research for a PhD thesis on Mhlaba's case. Based on the percentage of this type of royalty paid out by Samro, Gilfillan estimates that R1.2 billion was deducted DP's name over 55 years*"

This, based on the information at my disposal, I believe is factually incorrect.	R2 billion is incorrect - that was never the amount published. Notwithstanding, the SAMRO CEO's belief, after 9 months at the helm, of a hidden aspect of SAMRO corporate memory, the "belief" is dubious and without evidence or disclosed foundation. More to the point the SAMRO CEO has been told by others some figures such as in 2017 "In terms of our calculations the amount relating to DP works in all distributions for 2017 was around R756,760.72 ". SAMRO has not made full disclosure as to the others who are treated in the same manner and a proper audit is overdue.
I have commissioned an exercise to get an accurate figure which the board and membership of SAMRO will have access to within the week.	the exercise is laudable, however when SAMRO cannot locate at the warehouse where all its files are kept, Ms Mhlaba's SAMRO deed over a period of 10 months, then how an accurate figure for 55 years of attributions to DP will be found in a week - especially if there is a commissioning process to be followed. At face value this cannot be believed and more time should be allowed if an accurate believable figure is to be determined.
2. Understanding the 16.7% Arrangement Rule – what is this and who gets the balance (83.3%)?	the answer to "what is this and who gets the balance (83.3%)?" is omitted and the question is not dealt with.
This 16.7% rule deals with musical arrangements of an existing musical work.	As stated in the City Press article, and not in dispute or denied, "This matter relates to a historical or legacy rule applied not only by Samro but other similar organisation in other territories,” claims Ndlovu"

	The admission that there is a rule that "deals with musical arrangements of an existing musical work" does make the rule lawful. In this instance the rule is and has been unlawful since inception - it is legally indefensible. Predictably, SAMRO omits to address the law or that the rule is unlawful
Where an arranger creates an arrangement, he (the arranger) receives 16.7% of the copyright in the new arrangement while the balance goes to the composers of the original work because the presumption is that original work forms the basis (and thus lion’s share) of the new arrangement cannot be said to be “worth” 83.3% of the copyright.	The SAMRO CEO makes the admission on record as to what SAMRO does saying "*Where an arranger creates an arrangement, he (the arranger) receives 16.7% of the copyright in the new arrangement while the balance goes to the composers of the original work*" - this is how SAMRO sees it, does it...and has done it for 55 years and is *still* doing it and its unlawful. The creation (authoring) of a musical work or literary work is a matter of "fact" not "agreement" and it is not, when an 'author is the he first owner of what he/she creates, a share conferred by a 'Third party'. It’s only a pre-1994 mentality that provides for the illusion that SAMRO 'power' rules here - it does not. The law of the land does

	The logic offered by the SAMRO CEO "…..because the presumption is that original work forms the basis (and thus lion’s share) of the new arrangement." is illogical and without any basis in law, notwithstanding that it manifests confusion. Firstly there is no such “presumption” – there is only the law – in this instance the Copyright Act 98 of 1978. It is not surprising that no legal basis or reference is supplied by the SAMRO CEO, because there is none. Secondly there is no such term in as “original work”. It is alleged there is purposeful confusion with the meaning and intent of the word “original” which word is intended by SAMRO to mean the “first” confused with the term “public domain” which has the meaning of being out of copyright. “first” has no standing when a work is out of copyright – Correctly an “adaptation” as the law defines can be applied to work in copyright with authorization or a work out of copyright without need for authorization Thirdly the reference to “and thus lion’s share” is nonsense, cannot be evidenced and has no basis in law and the SAMRO CEO cannot offer any. A new arrangement is addressed case by case based on the ontology of the each case…i.e. the factual and truthful reality…..not some “God” decision from SAMRO as if such as law, which during the apartheid years was the norm. It is not SAMRO’S decision

This presumption may be questioned where the arrangement is so fundamentally different to the original work that the original cannot be said to be “worth” 83.3% of the copyright	The "presumption" does not exist and who or which party might would question it is not disclosed by SAMRO……because there is no such party. In South African case law history there has never been such a question. The law is not subjective is constructed to be as objective as possible thus whether something is fundamentally different or slightly different, is a matter, with a work in copyright for the interested parties to check the actual arrangement done and come to an agreement of the split in that regard or in the case of a work where the copyright has ceased to subsist, it has no application as the decision vests with the arranger. The concept of "cannot said to be" is subjective and without basis in law.....said by whom one wonders? It is not SAMRO's call ever and there is no one size fits all. As every adaptation is different it is up to the case by case adaptation agreement between the interested parties (for works in copyright) and is for all intents and purposes irrelevant for works where the copyright has ceased to subsist.
NB: Even though the arrangement is a new copyright-protected work (stand-alone from the original), the ownership in it is split between the original composer and the arranger.	The Copyright Act 98 of 1978 in Defintions 1 (1) an adaptation is defined for a musical work as "In this Act, unless the context otherwise indicates— (i) “adaptation”, in relation to—(b) a musical work, includes any arrangement or transcription of the work, if such arrangement or transcription has an original creative character;"

		A literary work is defined in the Copyright Act 98 of 1978 in Definitions 1 (1) In this Act, unless the context otherwise indicates— (i) "adaptation", in relation to— (a) a literary work, includes— (i) in the case of a non-dramatic work, a version of the work in which it is converted into a dramatic work; (ii) in the case of a dramatic work, a version of the work in which it is converted into a non-dramatic work; (iii) a translation of the work; or (iv) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical; The ownership (in the new work that is the adaptation) is determined case by case based on what arrangement/adaptation actually occurred (and is rarely 50:50) as far as works in copyright are concerned. With works where copyright has ceased to exist there is no split. There is no such as the SAMRO CEO asserts

	The term "original" in the context of copyright needs clarification as SAMRO is confused. Works are eligible for copyright "*if they are original* " and with an adaptation "*if such arrangement or transcription has an original creative character;*" Established case law in common law copyright jurisdictions confirms that that meaning of "*original*" is founded in skill, labour, effort and judgement (i.e. sweat of the brow) of the right kind and that is no *de minimis* – certainly nothing to do with "first" as is SAMROs understanding
What if the arrangement is of a song that is in the public domain?	When copyright has ceased to persist in a song (presumably a musical work and a literary work), under law, the song ceases to have any copyright. In parlance one might say that the song is 'old copyright' with no value. The arrangement (adaptation) is 'new copyright' so to speak and is in copyright. The outcome of an arrangement of a public domain work is that 100% of the copyright vests in the arrangement.
The theory behind copyright expiring 50 years after the composer's death is so that the work can used for the benefit of the public after the composer has had the exclusive right to the work during its copyright lifetime.	This theory is not referenced and does not have any legal or historical basis. In fact when the term of copyright ceases to exist in a work what happens is that the public, any member or members thereof, has the all the rights to the work that the actual composer (s) had in respect of the work, during the life of the composer, to do with as they wish without need for any permission. The above does not rule out the work being used for the benefit of the public - such is the unfettered right of any member of the public, should they so choose.

Anyone can use a public domain work but no one can ever own it.	The copyright in a work where the term of copyright has ceased to subsist, in the form that it was first published, has no basis for any copyright claim. What does hold true in law is that the author of an adaptation is the first owner of the adaptation and whomsoever publishes an adaption is the owner of the adaptation and only they can authorise the use of their adaptation as such is in copyright.
The songs in question, arranged by Ms. Mhlaba, were in the public domain (i.e. there was no copyright accruing to the original composition which she was arranging).	An adaptation creates a new work in copyright 24 of the 90 works (Musical and literary) were adaptations of works in the public domain. The copyright in the work being arranged had ceased to subsist. There is no such thing as an "original composition"
According to the Arrangement Rules in force at SAMRO, Ms. Mhlaba was allocated the 16.7% discussed above.	There are no so-called rules as "Arrangement Rules" at SAMRO. The rules in force are the Performing Right Royalty Distribution Rules. Said another way SAMRO played "God" and unlawfully decided that Ms Mhlaba should be "allocated" 16.7%

	The Performing Right Royalty Distribution Rules, as far as arrangements of works where copyright has ceased to persist, are a product of a twisted and sick 1963 South African apartheid state, specifically designed at the time to profit, by all means, legal or illegal, and where the apartheid law of the day offered a helping hand to increase profits by unlawfully deducting without fear of sanction, 83.33% of every rand attributed to the arrangement of a work where copyright ceased to subsist, those in charge at SAMRO used 'rules' to financially subdue the natives so to speak specifically targeting black people In practice the "rule" of allocating 83.33 cents of every rand due to an arranger of a public domain work in 1963 was unlawful, just as it is in 2018. In 2018 this twisted practice which still persists, replete with its well-financed (white) black defenders, remains an unlawful practice
The remaining 83.3% is assigned the category "DP", indicating that this portion is in the public domain (i.e. there is no copyright) and the royalties that would have accrued had the work been in copyright are ring-fenced and distributed to all SAMRO member musical works that have been active in that year	Having established above without question or doubt that the interested party called "DP" is a composer author (See below ref Ms Mhlaba) but not a natural person, and that a work where the term of copyright ceases to exist, in law, has no copyright, it is illogical that "DP" can have any share and correctly, as shown above can only be 0.00% and to assert such would, it is opined, be unlawful. 100% of the copyright vests in the arranger (and their publisher if the arranger has one) and only in an apartheid state, as a firm doyen of the then ruling National Party, could SAMRO have instituted what is an unlawful practice of "DP"

	What SAMRO in effect admits to here is a "scheme" to take 83.33% of off every rand generated by new copyright works, new arrangements of public domain works and unlawfully pay such to other parties, who had no legal right to income from works they neither published nor created. Even still SAMRO has offered no evidence of "ring-fencing" of the 83.33 cents of every rand SAMRO CEO makes a false and untrue statement saying that the 83.33 cents would have been "*distributed to all SAMRO member musical works that have been active in that year*". SAMRO income is distributed to author, composer, arranger and publisher members.....never to SAMRO member musical works

CopyrightOw	Role	Name	Name	Shares PR
0000631650	CA	DP		83.33
0000631652	AR	MHLABA	HLENGIWE PATIENCE	16.67

ItemId.....: W-001946125
Main title .....: EVERYDAY WITH JESUS

Gilfillan's argument that an arranger should own 100% of the arrangement of a work is challenged by SAMRO on the grounds that, if his argument is followed through, it means arrangements of musical works in copyright should also belong 100% to the arranger	There is no "Gilfillan's argument" - only the law and audit findings. Needless to say, the statement has no logic and is not founded in fact or law

	Adaptations of musical works concern two types of musical works (excluding orphan works) 1. Works in copyright – permission required from existing rights holders (publisher and authors) of the work 2. Works out of copyright i.e. in the public domain, copyright expired – no permission required In both instances one is taking "old copyright" and adding in "new copyright" and with the "new copyright" the author of that is always the first owner in law, regardless as to whether the adaptation/arrangement was made lawfully or unlawfully. SAMRO's explanation of the 'other view' is utter nonsense in law
This cannot be the case	The case is explained above
Whether the original work is in the public domain or has copyright should not be the deciding factor in law as to the copyright ownership of the arrangement	There is no such thing as the "original work" in the Act There is no "should" here….a subjective view - there is only the Copyright Act and decided case law, alongside regional and international treaties and conventions

	Copyright ownership of the arrangement is agreed to (between the interested parties) for a work in copyright. No such agreement is required for a work where the term of copyright has ceased to exist, as no copyright exists and there is no-one, certainly not SAMRO, to have enquire, as an arranger as what one's copyright share will be - it will be 100%
The legal principles of arrangements must be applied uniformly.	The law, as detailed in the Copyright Act 98 of 1978 is what applies and the SAMRO CEO response herein indicates that there is no accurate legal knowledge or compliance at SAMRO in the matter of arrangements. What legal principles the SAMRO CEO refers to are not detailed or evidenced and unknown - certainly there are no "legal principles" that apply as has been contended.
That said, it is acknowledged that the redistribution policy of DP categorized works is not best practice and SAMRO, as part of its policy overhaul, is committed to addressing this urgently	The admission that SAMRO has had in place (since 1963 it is contended) a redistribution policy is noted. It should equally be noted it is opined that this "redistribution policy" has caused 55 years of pain, misery and poverty to back composers, arrangers and authors on the one hand and simply unethically and immorally contributed to greed and the benefit of the few on the other hand. It is not that the "redistribution policy" is "not best policy" - it is patently unlawful policy.

What is promising here is that the CIPC (under the Department of Trade and Industry) is drafting Regulations which will govern how indigenous musical works should be treated for copyright purposes where an arrangement is made.	It is doubtful these regulations will ever see the light of day as there are no such works to which such applies given that formatting a musical work onto a sound recording, whether indigenous or not by a South African is a necessary step to copyright subsistence. If a musical work is "original" regardless of the genre is is eligible for copyright
This will give much needed clarity in those instances and mandate SAMRO on the correct channels into which to pay these royalties	Given that an arranger is the first owner of the arrangement, which varies case to case, this cant and wont be mandated by Government, to SAMRO or anyone else.
3. Does SAMRO's board and executive in 2018 acknowledge that its rules are outdated and need to change urgently?	The last 4 CEOs and the SAMROs Board since have said he same for the past 16 years - that's what the track record of SAMRO CEOs and Board's advises.
Yes! In November 2017 at the AGM it was agreed that SAMRO's Membership Rules (which include Distribution Rules) are outdated. The rules governing board member eligibility, membership tiers and all other rules were discussed extensively at the AGM of November 2017 and it was agreed that a process to amend these would commence soon thereafter	This admission is noted - the question nearly 4 months later is "what processes to amend" exactly have commenced?:
Further, the need to review the copyright percentage in arrangements and review the DP rule is accepted by SAMRO.	This says nothing as to how SAMRO will deal with 55 years of unlawful claims as regards percentages it had no right to play "God" with. It was never SAMROs decision to decide any "*copyright percentages*"
This process is indeed underway and has been communicated to members accordingly	Noted - time, date, format of what has been communicated to members has been offered or shared.

You will have received the following from SAMRO over the past few months:	the claim is noted
• A questionnaire requesting your input regarding membership tiers, Grant of Rights Payments, Board membership etc.;	This has not been seen
• A timeline of the process including Roundtable Member Meetings being held this month in the three major centres (10 April - CPT / 13 April - DBN/ 23 April - JHB) and an Extraordinary General Meeting in June 2018 where NEW rules will be agreed upon by the membership;	According to SAMRO it has 14 000 members who certainly do not live in only 3 provinces in South Africa and certainly the majority as in 80% do not have English as a first language – how do the rest of the members have communication with SAMRO?
• Proposed amendments for discussion (to be sent during the course of the current week).	Noted
Notice of the AGM will be given closer to the time of the meeting. Please keep looking out for information and notices from us in this regard	Noted

In this same spirit, we welcome the Commission of Enquiry mandated by the Minister of Arts and Culture Nathi Mthethwa yesterday (2 April 2018).	All would welcome Minister Mthethwa's hurried response were it not for some shortcomings:- 1. Copyright law matters are the purview of DTI and not DAC and this announcement would have been far more effective as a joint effort; 2. Prior consultation and effective diligence was lacking. 3. The DAC Legal Department has credibility problems and it is alleged that the Public Protector should be taking a much closer look. 4. His admission that "This is a matter that has been of great concern to Minister Mthethwa for some time, and he is well aware that artists continue to die as paupers" when under his tenure nothing has been done and there is nothing to show for it. 5. His own credibility due to the shocking handling of the SA Roadies and the corruption at NAC
From the time executive management changed in July 2017, many improvements to processes and operations have been identified as necessary and urgent and we are happy to share and work with the Commission in this regard	What the Government urgently needs is a seat on the SAMRO Board and unrestricted access to SAMROs Database as well as the CIS-Net database - there is no private or confidential information that concerns authorship and ownership shares in musical and literary works Access is the issue and such should be demanded by Government on an urgent basis

4. The relationship between SAMRO and multinational publishers	This is not addressed ort explained - the relationship is omitted other than to clarify the Board and to say "*it should be remembered that locally based multinational publishers play the role of administrators for many local publishers and as such continue to play an important role in the copyright value chain.*"
The listening (or playing) patterns on radio have dictated that the majority of royalties in the past were paid to international rightsholders – whether through local sub-publishers and affiliates or sister collecting societies.	This admission is noted and further comment is reserved
With the change in radio/TV playing patterns, however, we are seeing more royalties staying in South Africa.	This admission is noted and further comment is reserved
This is evidenced in the last Radio Distribution (March 2018) which saw a total of 6 907 local members earning either for the first time (over 2000 new earners) or increasing their SAMRO earnings significantly.	These facts have no context and thus it is not possible, on face value to understand or believe who actually received such royalties
In total, an increase R24.2 million in local distributions was seen	According to SAMRO - however without evidence this is hearsay
It was also alleged that over half of SAMRO's board is made up of multi-national publishers.	A false and untrue statement

	The City Press article cited "*But City Press' investigation found that, of the R370 million paid out annually by Samro, about 70% goes to the major multinational publishers and leading independent publishers operating in South Africa, who also constitute about half Samro's board*"
This is not true. .	"about half" meaning "not half" is true.
Only one board seat is occupied by a publisher that can be described as a multinational publisher	Noted SM Publishing aka Sony ATV - this as the AMRO CEO knows does not speak for the 55 year history nor those who put the current unlawful rules in place and who benefit from such
Please follow the link to see a list of the board members: http://www.samro.org.za/about	Thank you
It should be remembered that locally based multinational publishers play the role of administrators for many local publishers and as such continue to play an important role in the copyright value chain.	One wonders what this has to do with the matter at hand other than to offer an excuse that such allow for certain privileges not available to those not deemed to play "*an important role in the copyright value chain*"
5. The contractual relationship between Ms Hlengiwe Mhlaba and Mr Sipho Makhabane	There never was no contractual relationship, compliant with Ch 1 Sec 22 of the Copyright Act 98 of 1978, between Ms Hlengiwe Mhlaba and Mr Sipho Makhabane. SAMRO has known of this since 2006. SAMRO does not address the contractual relationship between Ms Hlengiwe Mhlaba and Mr Sipho Makhabane below - as elsewhere in the SAMRO CEOs response, a matter is omitted, again whilst offered in the number point, its missing from the response

Indeed both Ms Hlengiwe Mhlaba and Mr Sipho Makhabane are SAMRO members.	SAMRO has long picked sides on this matter firmly with Mr Makhabane from the outset of Ms Mhlaba's works being performed/broadcast in public waiving SAMRO rules and the law……and unlawfully allowing for Makhabane to take 50% of Ms Mhlaba's performing right income as well supporting the charade that Makhabane was a lawful assignee. Even when confronted with the evidence, SAMRO still refused to abide by its rules or the law, trying to find any way possible to 'legalize' Mr Makhabane's claims, especially trying to assert that notifications were somehow legal documents that transferred rights The absurdity is that there is no legal dispute as SAMRO would like to represent in the sense that it is SAMRO's actions that are the issue, not just Makhabane. SAMRO does not have clean hands in this matter and certainly neither of the members has any powers inside SAMRO
However, in the interest of protecting the privacy of Ms Mhlaba and Mr Makhabane in relation to their earnings, SAMRO is not in a position to disclose information relating to earnings	There are no confidentiality clauses or provisions at SAMRO Ms Mhlaba has not asked for, nor is interested in any privacy protection
SAMRO has engaged with the members in question, including Ms Mhlaba's advisor Graeme Gilfillan, and within this interaction a way forward was agreed upon to ensure that the SAMRO rules are applied objectively.	Facts are: 1. It took SAMRO 10 months to call and speak with Ms Mhlaba 2. One meeting has been had with Ms Mhlaba 3. No way forward was agreed 4. SAMRO Rules continue, at SAMRO's insistence, to be applied unlawfully and to favour Mr Makhabane in an ugly display of patriarchy and sexism

	To avoid acknowledging to SAMRO members and others that Ms Mhlaba has hired a copyright lawyer, a highly skilled multi-jurisdictional copyright lawyer and forensic expert at that, which the SAMRO CEO knows full well, the SAMRO CEO misrepresents the copyright lawyer as a "advisor", an unqualified assumption that a bears no shred of truth in fact.
In instances where there was conduct which was not in line with the rules or it was found that one member benefitted unduly at the expense of another member, this has been and will continue to be addressed	Since the special power of attorney to audit and investigate SAMRO was issued by Ms Mhlaba in February 2017, SAMRO's conduct has been found not to be in line with the rules, never mind Mr Makhabane. In 14 months the SAMRO communication record evidences that SAMRO has not addressed the issue and since the 1st week of January 2018 to date has not responded or reverted.
On the allegations of corruption relating to Mr. Makhabane, SAMRO takes this assertion in a serious light and will take the appropriate actions to ensure that this matter is resolved taking into account its legal obligation and the interests of both members	The claim by SAMRO CEO that "*SAMRO takes this assertion in a serious light and will take the appropriate actions to ensure that this matter is resolved taking into account its legal obligation and the interests of both members*" cannot be factually supported, is contradicted entirely by the communication record and to all intents and purposes is false and untrue.
6. Ongoing investigation of AEMRO (Dubai subsidiary)	The investigation into SAMRO's investment in Dubai which "*was in the form of an 80% owned subsidiary by the name of Arab Emirates Music Rights Organisation ("AEMRO") and was established in 2015". Strictly speaking, it is(was) a SAMNRO subsidiary……..not a 'Dubai subsidiary*"

At the AGM in November 2017, it was mandated by the membership of SAMRO that a further forensic investigation should take place as the initial investigation was found to not be satisfactory	The challenge that stands up and shouts is that the assurance given on Friday 27 October 2017, at 10h00, in the Auditorium at SAMRO Place, by SAMRO Chairperson Jerry Mnisi, repeated in a 29th March 2018 media statement issued by SAMRO saying *inter alia* "*At the time of the announcement, Chairman of the SAMRO Board, Mr Jerry Mnisi said: "I have reviewed the process of making this investment, and can guarantee on behalf of the Board, that there was nothing untoward in this venture, except that now was not the right time and we as a board regret the loss of SAMRO time and money. This was done in the interest of the organisation, the members and publishers. Our newly appointed CEO, Ms Nothando Migogo, was instructed by the Board to terminate this project and wind down its operations*" was disbelieved by members and provided no assurance or confidence to the members
	The mandate by SAMRO membership for a further forensic investigation is clear indictment and *prima facie* evidence that the first forensic audit failed to meet the SAMRO member's 'muster' - it was not deemed to be enough
This "phase 2" forensic investigation is currently underway with professional services firm Sekela Xabiso, the scope of which covers both civil and criminal liability in both South Africa and Dubai	So SAMRO CEO claims - almost 4 months since the instruction there has been no word or update from SAMRO.
7. In conclusion	

We are keenly aware of the matters of transformation and are constantly working on improving the organisation's processes and rules in the interest of all our members	This claim is vacuous and on the facts specifically rebutted. It is without evidence and comes from a discredited organization that is not viewed or found to be honest in its dealings. A court ordered audit of SAMRO and its 55 years would factually reveal a different landscape than claimed
However, a commitment to changing and evolving for the benefit of its members has been unequivocally made by SAMRO's board and new executive management at its last AGM	SAMRO's Board is disbelieved and devoid of credibility - its commitment is taken with a pinch of salt.
Further, SAMRO is committed to ensuring that any wrongdoing in the past will be accounted for.	This is a false and untrue statement - SAMRO has never addressed its sordid past and the wrong doing begun then that has continued unabated till this day. The SAMRO communication record as regards Ms Mhlaba and Mr Makhabane is proof positive of SAMRO doing everything and anything NOT to address wrongdoing to Ms Mhlaba, in particular because SAMRO itself was implicated. This committment has no veracity.
And lastly, we are open and committed to working with the relevant government departments to ensure SAMRO operates at the upmost levels of efficiency and transparency.	SAMRO'S historical on record position, never mind its present position as regards the Copyright Amendment Bill, has been avowedly anti-government

	The commitment can only be seen as empty and cannot be taken seriously - window dressing at best. SAMRO has been totally against Government taking a seat on the SAMRO Board and refuse access to Government to the private CIS-Net database that is used *inter alia* to hide the recipients of royalty claims and receipts globally - which SAMRO knows numerous departments of Government, especially SARS and the Reserve Bank, don't even know about Government cannot ensure anything on what it does not have access to