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## PART I – GENERAL PROVISIONS AND PROCEDURES ON MEMBERSHIP

### The Distribution Rules and their Purpose

The Copyright Society of Botswana (COSBOTS) is the Collective Management Organization in Botswana; incorporated in 2008 as a Private Company Limited by Guarantee, COSBOTS is mandated by the Copyright and Neighbouring Rights Act CAP 68:02 to among others administer rights collectively by licensing and collecting fees from users of copyright works and distributing computed royalties to copyright owners. The purpose of this document is to govern and guide The Society and its membership. Application of these Distribution Rules will also determine the method of Distribution of royalties and fees collected from users of copyright works. This document shall therefore be applied in respect of literary, musical, and other artistic works of both national and foreign rightsholders, as outlined in the Constitution of The Society, and the Copyright and Neighbouring Rights Act CAP 68:02. The membership and Distribution Rules included shall consequently be administered and interpreted by The Society in its distribution of royalties to its members and to members of Affiliated Organizations and other Rightsholders.

#### Definitions:

In these Rules the following terms shall have the meanings assigned to them as follows:

**“Author”** means a person who has created work and shall include:

- i. in relation to a literary work, the author of the work.
- ii. in relation to a musical work, the composer.
- iii. in relation to artistic work other than a photograph, the artist.
- iv. in relation to a photograph, the photographer.
- v. in the case of a sound recording or film, the person by whom the arrangements necessary for making the recording of film are undertaken.
- vi. in the case of a broadcast, the person making the broadcast or, in case of broadcast which relays another broadcast by reception and immediate re-transmission, the person making the other broadcast.
- vii. in the case of a cable programme, the person providing the cable programme service in which the programme is included.
- viii. in the case typographical arrangement of a published edition, the publisher.
- ix. in the case of a literary, dramatic, musical, or artistic work, which is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken.

**“Board”** means the Board of Directors for the time being of The Society, as constituted and authorised to act pursuant to The Society’s Constitution

**“CISAC”** The International Confederation of Societies of Authors and Composers is an international body established to coordinate activities of copyright societies and their cooperation. CISAC also assists in the cooperation, bilateral agreements, and mutual representation of each other’s repertoires.

**“IFPI”** The International Federation of the Phonographic Industry is the association representing the recording industry worldwide, from large international major companies to small independent record companies in many countries, national industry associations and affiliated Music Licensing Companies (MLCs) also known as collective management organizations (CMOs), that collect “performance rights” royalties on behalf of record companies / producers in various countries across the world.

**“Distribution”** means any dissemination that may, pursuant to the Distribution Rules, be made among the members and affiliated organisation’s out of the monies received by The Society in respect of the exercise of the rights, licence or authority granted to The Society.

**“Distribution Classes”** are classes developed and used by The Society in its monitoring of royalties’ collection and distribution to its members.

**“Distribution Rules”** means such rules or byelaws as the Board may deem necessary or expedient or convenient for the proper conduct and management of The Society Distribution methods, and no rule or byelaw shall be inconsistent with or shall affect or repeal anything contained in the Constitution.

**“Essential Users Class”** is a class in which music is integral to the business process. The Distributions shall be based on log sheets from all essential public users and monitoring reports as indicated in the sub-classes.

**“Fiche Internationale”** is the Repository for data on musical works that is available for CISAC Societies to identify musical works, its creators, and owners in the international system.

**“Important Users Class”** is a class in which music provides significant entertainment. The Distribution shall be based on all the log sheets submitted by all users classified as important by The Society.

**“Incidental Users Class”** is a class in which music provides passive background entertainment. The Distribution will correspond with the number of log sheets submitted by all users classified as incidental by The Society.

**“Member”** shall mean registered members of The Society

**“Performer”** means a singer, musician or other person who sing, deliver, declaim, play in, or otherwise perform literary and artistic works or expressions of folklore.

**“Producer”** of an audio-visual work or a sound recording, means the person who undertakes the initiative and responsibility for the making of the audio-visual work or sound recording.

**“Reproduction Recording Rights”** Class is a class in which The Society shall apply the Distribution based on the number of copies which the right holder is going to duplicate.

**“Reciprocal Agreement”** is a mutual agreement between The Society and another society in which both Societies agree to provide services for members on behalf of one another in their areas of operation. This arrangement is premised on the fact that Copyright is territorial.

**“Right Holder”** means a person or legal entity which owns economic rights in a copyrightable work.

**“Affiliated Organizations,”** mean other societies in different territories administering Collective Management Organisation, which may enter into Reciprocal Agreements with The Society, or other rightsholder groups, which may have mandated The Society to administer their rights in Botswana.

**“The Constitution”** means the body of fundamental principles through which The Copyright Society of Botswana is governed.

**“The distribution keys”** are international standards to guide Societies regarding the percentage shares of royalties to be distributed among composers, arrangers, publishers, adapters, performers and producers and other contributors to works.

**“The Genre Criterion”** is a principle developed by The Society to promote the development of the country’s culture and to encourage creativity of some categories of work. This is done by allocating more royalties to certain works which are to be promoted.

**“The Society”** shall mean the Copyright Society of Botswana, or (COSBOTS) established under section 36A of the Copyright and Neighbouring Rights Act Cap 68:02.

**“WIPO”** means The World Intellectual Property Organization, which is a specialized agency of the United Nations that is dedicated to developing a balanced and accessible international Intellectual Property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

#### **Words not defined**

Words whose meanings have not been provided here shall mean the same as in the Constitution of The Society, and or the Copyright and Neighbouring Rights Act Cap 68:02.

#### **1. Registration Requirements**

- 1.2 A copy of the work being notified to COSBOTS.
- 1.3 In case of publishers and producers, a certified copy of certificate of incorporation or business name will be required, certified by the Companies and Intellectual Property Authority.
- 1.4 Applications for COSBOTS membership should be accompanied by suitable evidence such as a copy of the commercial recording, a letter / email from the broadcaster confirming that the broadcast took place or confirmation in a letter / email from the venue manager/owner or promoter that the qualifying performances took place
- 1.5 For identification:
  - i. Three (3) recent passport size photographs and a copy of identity card/passport/birth certificate.

- ii. For citizens of Botswana, a certified copy of national identity card or (birth certificate if less than 16 years and should be accompanied by a parent or guardian).
- iii. A valid passport for foreigners and residence permit (people under the age of 16 should be accompanied by parent/s or guardian).
- 1.6 Copies of written agreements for works of joint ownership, commissioned works or works made-for-hire in which ownership of rights have been transferred.
- 1.7 Names of group members (and if it is a group/band or choir) the nominated representative (where applicable).
- 1.8 Death Certificate from Civil and National Registration if applying on behalf of a deceased person.
- 1.9 Any other document that can assist to prove or support your claim to copyright ownership in the work.
- 1.10 Bank Account Details of the applicant/s as well as those for the beneficiary/ies.

## **2. Registration Process**

- 2.1 The candidate member will be provided with the membership rules to make him/ her aware of his/her obligations upon becoming a member.
- 2.2 The candidate member will then complete relevant membership application form/s.
- 2.2.1 Notification of New Works

### *2.2.1.1 Via Paper Works Registration Forms*

There are two types of paper forms, which can be used to register works: a form for unpublished works and a form for published works. All contributors on the work must sign unpublished work registration forms. Where members wish to notify several similar works, provided that the number of writers is the same and the contractual details and shares are identical, additional titles can be entered on the second page of the works registration form. Paper works registrations are processed on a weekly basis.

### *2.2.1.2 Via Online Works Registration Facility at [www.cosbots.com](http://www.cosbots.com).*

The online works registration facility is available under membership forms in the application forms area of the website [www.cosbots.com](http://www.cosbots.com). If the work is co-written, members must confirm to COSBOTS, via the online declaration, that they have notified all other contributors on the work that they are registering this work on their behalf and that all contributors agree to the share splits as indicated. Where members wish to notify several similar works, provided that the number of writers is the same and the contractual details and shares are identical, additional titles can be registered by using the Copy function on the work. Online works registrations are processed daily.

### 2.2.2 Work Amendments

#### 2.2.2.1 Via Paper Works Registration Forms

Work amendments must be submitted to COSBOTS on paper works registration forms. All original and new contributors to the works, for whom shares are being updated, must sign and date the amended works registration form.

### 2.2.3 Duplicate Claim

COSBOTS follows international best practice where counterclaims or disputes arise in relation to the ownership of musical works. Where a new copyright owner claim conflicts with an existing copyright owner claim, then the new claimant must be able to support this claim with documentation within 60 days before that claim can be accepted by COSBOTS. In the meantime, COSBOTS will continue to pay the original claimant. If the new claimant can document its claim, then the original claimant has 60 days to produce documentation for its claim. If the original claimant has not answered within 60 days, they will be notified that their claim has been replaced by the new claim. If both parties maintain claim and can supply supporting documentation, then either party can seek to have the works placed in dispute and the relevant shares suspended pending agreement. Board approval is required to place a work in dispute.

- 2.3 The member shall then be issued with a Provisional Membership Card and shall remain a candidate member until her or she qualifies for associate and or full membership.

- 2.5 A member awarded full membership shall then be issued a certificate and a permanent membership card.

### **3. Documentation Principles**

- 3.1 To be eligible for membership the applicant must be:
- i. An individual who is a citizen of or is domiciled or resident in Botswana.
  - ii. A legal entity which is incorporated under or in accordance with the laws of Botswana.
  - iii. An owner of economic rights in a work being exploited.
- 3.2 There must be evidence of the work reduced to material form notwithstanding section 6.1 of Copyright and Neighbouring Rights Act CAP 68:02: - An applicant shall be required to produce evidence of their works in tangible form
- i. Compact disc form and computer programs
  - ii. Cassette
  - iii. Written form containing the lyrics and notes
  - iv. Digital compact disc
  - v. All other evidence relating to literary and artistic works such as books (with drafts), films, photographs, paintings, drawings
- 3.3 In addition to evidence produced in material form in audio-visual works, there must be a legally binding contract signed by all parties (deposited to COSBOTS):
- i. an author and publisher
  - ii. a performer and producer,
  - iii. a publisher, composer, and an author
- 3.4 For folklore described by the Copyright and Neighbouring Rights Act Cap 68:02 Section 2: folklore means 'a group-oriented and tradition-based creation of groups or persons reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means including:
- i. Folktales, folk poetry, and folk riddles.
  - ii. Folk songs and instrumental folk music.
  - iii. Folk dances and folk plays.
  - iv. Productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, handicrafts, costumes, and indigenous textiles.
- 3.5 If the work is presumed to have been created by an identified author(s) and passed on from generation to generation as an element of traditional cultural heritage of Botswana, then prior written authorization shall be obtained from the Author or his/her beneficiary/ies.
- 3.6 Membership shall normally be granted on individual basis. However, should a choir, group or band apply for membership then they shall be required to meet the set rules and must submit an agreement signed by all members of the choir, group, or the band. Legal entities which own economic rights shall, subject to COSBOTS rules and regulations, also be entitled to membership.
- 3.7 All applicants shall be eligible for membership as provisional members; however permanent membership shall be subject to authentication and Board approval.

### **4. Membership Benefits**

- 4.1 Members receive royalties from local users of copyright works.
- 4.2 Members receive royalties for exploitation of works in foreign countries whose Collective Management Organisations have entered into reciprocal agreements with COSBOTS.
- 4.3 Members are guaranteed authorised usage for, and protection of their works.
- 4.4 COSBOTS negotiates on behalf of members for royalty rates.
- 4.5 COSBOTS monitors usage of members' protected works.
- 4.6 Permanent members are eligible to vote and participate in policy making for COSBOTS.
- 4.7 Members are entitled to royalties:
- i. For the duration of the member's life.

- ii. For joint ownership; life until the death of the last surviving copyright owner.
  - iii. For audio-visual and collective work, 50 years from the date on which the work was made or first made available to the public or first published, whichever date is the latest.
  - iv. For right to equitable remuneration for use of sound recordings; from date of publication until the end of the 50<sup>th</sup> year of publication, or if the sound recording has been published, from the date of fixation of the date of sound recording until the end of the 50<sup>th</sup> calendar year following the year of fixation.
  - v. For work/s of applied arts; 25 years from the making of the work
- 4.8 Members' beneficiaries are entitled to benefit from royalties:
- i. For 50 years after the death of the copyright owner.
  - ii. For joint ownership 50 years after the death of the last owner of copyright to survive.
  - iii. In case of audio-visual and collective work for the remaining period of the 50 years from the death of the copyright owner.
  - iv. In case of work/s of applied arts, for the remaining period of the 25 years from the death of the copyright owner. NB (economic and moral rights of work of applied arts are protected for 25 years from the making of the work Section 10 (5) of the Copyright and Neighbouring Rights Act CAP 68:02)
- 4.9 Members will have appreciation and understanding of copyright and neighbouring rights matters.
- 4.10 Members will save time and money, therefore be empowered to focus on, and develop their careers.

## PART II – ARRANGEMENT OF RULES

### RULE 1

#### 1. Distribution Principles

The Society recognizes the overarching principles of the Berne Convention. Its distribution principles are guided by the following:

- 1.1 The principle of equal treatment where foreign authors shall enjoy the same rights as enjoyed by nationals of member countries [Berne Convention Article 5(1)].
- 1.2 The Distribution of royalties shall be based on COSBOTS Distribution Rules, not according to the rules of other Societies (The Principle of Independence of Distribution).
- 1.3 The distribution shall be based on the usage of the work ("Suum Cuique" Principle) and if not practicable, then a statistically valid sample of actual usage shall be used.
- 1.4 Distribution to Affiliated Organisations shall be in accordance with the respective signed Reciprocal or Mandate Agreement.
- 1.5 The principle of full Distribution where royalties collected are distributed among all entitled right owners as much in proportion to the actual use of their works as possible
- 1.6 COSBOTS Net Distributable Revenue for music shall be divided as follows:
  - i. Musical Works – 60%
  - ii. Sound Recordings – 40%

### RULE 2

#### Rights Administered by The Society

- 2.1 Different rights administered by COSBOTS shall include the following.
  - i. Broadcasting of the work and recording for purposes of broadcasting
  - ii. Public performance of works
  - iii. Rental or public lending of the following:
    - a) Original copy or copy of the audio-visual work.
    - b) A work embodied in a sound recording, a computer (except where the computer program itself is not the essential object of the rental or lending),
    - c) A database or a musical work.
  - iv. Translation of the work
  - v. Adaptation, arrangement, or other transformation of the work
  - vi. The first public distribution of the original copies of the work by sale or rental to the public
  - vii. Other communications to the public such as advertising and promotions
- 2.2 The Society shall apply diligence and fairness to all distributions for members of affiliates and Sister Societies and Organisations in the distribution of all royalties.

- 2.3 A member shall transfer **the chosen** economic rights to The Society as the collective administrative body mandated by Section 36A of the Copyright and Neighbouring Rights Act CAP 68:02 to negotiate and grant licences with copyright owners for the exploitation of copyright works.

### **RULE 3**

#### **Works that can be registered**

- 3.1 (a) Section 3 of the Copyright and Neighbouring Rights Act CAP 68:02 of Botswana states that "a literary, musical or artistic work shall not be eligible for copyright protection" unless; (incorporate sound recordings)

It is an original intellectual creation in the literary and artistic domain. This means that the works for which economic rights are owned should have not been copied from elsewhere. These works which shall be considered suitable for registration with The Society include -

- i. Books, pamphlets, articles, computer programmes and other writings.
- ii. Speeches, lectures, addresses, sermons, and other oral works.
- iii. Dramatic, dramatic musical works, pantomimes, choreographic works, and other works created for stage productions.
- iv. Stage productions of works referred to in (i) above and of expressions of folklore.
- v. Musical works with or without accompanying works.
- vi. Audio-visual works.
- vii. Works of architecture.
- viii. Works of drawing, painting, sculpture, engraving, lithography, tapestry, and other works of fine art.
- ix. Photographic works.
- x. Works of applied art; and
- xi. Illustrations, maps, plans, sketches, and three-dimensional works relative to geography, topography, architecture, or science, (and section 25 & 26)

- (b) Section 23 of the Copyright and Neighbouring Rights CAP 68:02 of Botswana states that "the legal interests of certain persons and legal entities who either contribute to making works available to the public or produce subject matter which, will not qualify as "works" under the general understanding of copyright, but who, nevertheless, express creativity or technical and organisational skill sufficient to justify recognition of their contribution as deserving of protection; and such rights include the rights of performers, producers of sound recordings". These works include –
- i. Sound recordings; and
  - ii. Music videos

- 3.2 The derivative works which are protected under Section 4 of the Copyright and Neighbouring Rights Act shall also be suitable for registration with The Society; and these include -
- i. Translations, adaptations, arrangements and other transformations or modifications of work; and
  - ii. Collections of work, collections of mere data (data bases), whether in machine readable or other forms, provided that the collections are original by reason of the selection, co-ordination, or arrangement of their contents
- 3.3 The input/contribution to the derivative work must be original resulting in the new work being copyrightable independently of the existing work. If the work is an arrangement or translation, (local or foreign) of the existing work, the applicant must have prior authorization, signed by the copyright owner being the composer, author, publisher, performer, and producer.

### **RULE 4**

#### **Exclusions**

The following works shall not be eligible for registration with COSBOTS, as the Copyright and Neighbouring Rights Act CAP 68:02, Section 6 (2), does not extend protection on them: -

- 4.1 Any idea, procedure, system, method of operation, concept, principle, discovery, or mere data, even if expressed, described, explained, illustrated, or embodied in a work.
- 4.2 Any official text of a legislative, administrative, or legal nature, as well as any official translation thereof.
- 4.3 A broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable program: or

- 4.4 A sound recording or film which is, or to the extent that it is, a copy of a previous sound recording or film.
- 4.5 Words written specially for commercial advertisements are also excluded from COSBOTS control.
- 4.6 Public performances (but not broadcasts) of music especially written for dramatic productions in theatres, when performed in conjunction with such productions.

## **RULE 5**

### **Distribution Dates**

The Society shall schedule distribution dates and the categories of royalties that will be distributed at each date. Refer Annex 01 contained herein.

## **RULE 6**

### **Membership criteria**

- 6.1 Membership of The Society is open to the various copyright owners of works protected by the Copyright and Neighbouring Rights Act CAP 68:02
- 6.2 **Candidate member**  
A candidate member must complete the relevant membership application forms and declare their copyrightable works to the Society. The Board of Directors has the discretion to admit candidate members and the applicable criteria under which appropriate circumstances candidate member will be admitted to COSBOTS.
- 6.3 Candidate members shall initially be registered as provisional members, be issued with provisional membership cards, and remain so for a period not exceeding 6 months.
- 6.4 The criteria governing admission to Candidate membership of COSBOTS are as follows:
  - 6.4.1 Artists of Public Domain Music**, qualifies for membership of COSBOTS if one of their works has been either: -
    - a) Commercially recorded (proof required is a CD inlay card containing a barcode/catalogue number and the applicant's name as a composer/author/arranger of public domain works, OR evidence of a commercially available download of original material.) or
    - b) Broadcast on TV or Radio within the past two years, or
    - c) Performed in public on at least 12 occasions within the past two years.
    - d) Alternatively, the applicant may be: -
    - e) A classical composer whose work has been performed live at a concert or recital of classical music licensable by COSBOTS.
  - 6.4.1 To qualify for COSBOTS membership a Music Publisher must have a catalogue of at least 10 works, at least 5 of which must have received some form of commercial exploitation in Botswana within the past two years. In addition: -**
    - f) The writers of the 10 qualifying works must be members of COSBOTS, or of one of its affiliated societies.
    - g) The publisher must have acquired rights in at least 5 of the works for a territory within Botswana. A copy of the recordings or of the sheet music must be submitted in support of the application for the qualifying 10 works. Copies of all assignments between the applicant and the writers in respect of the works concerned must also be supplied. A sheet of the publisher's headed notepaper should be provided.
- 6.5 During the candidate membership, the works shall be subjected to the Society's authentication process.
- 6.6 The promotions of a Candidate member to Full and Associate membership are automatic. After the end of each financial year, members' earnings are examined to determine those who qualify for promotion. They are then notified of their new member status. The new status is not lost by any subsequent decline in COSBOTS earnings below the level of current criteria.
- 6.7 **Associate member**  
A candidate member will after 1 year's candidate membership aggregate earnings of P112.40 (writer) and P449.60 (publisher) over a period not exceeding three continuous years (4) (For transfer members, earnings while at your previous CMO will be counted.) qualify to become an Associate member.
- 6.6 **Full member**  
An associate member will after 1 year's membership aggregate earnings of P1250.65 (writer) and P5002.60 (publisher) over a period not exceeding three continuous years (4) (For transfer members, earnings at your previous CMO will be counted.) qualify to become a Full member



- 6.7. The earnings criteria shown above are for promotions from 2020 onwards. They will be reviewed every five years
- 6.8 Royalties shall only be distributable upon completion of the authentication process and or approval of full membership by the Society's Board of Directors.
- 6.9 A membership certificate as well as a permanent membership card will be issued upon approval of full membership.
- 6.10 Upon distribution of royalties the Society shall provide rights holders with information on the titles of the works, and usage being paid for.

## **RULE 7**

### **Rights of members**

- 7.1 Every, Candidate Member, associate member and every Full Member shall have a vote. No member shall be entitled to vote unless he is present in person or by proxy.
- 7.2. On a poll or on a secret ballot held under Article 19.1:
  - i. Every Candidate member shall have one vote on a show of hands or on a ballot
  - ii. Every associate member 1 vote on a show of hands or 10 votes on a poll or postal ballot
  - iii. Every Full Member shall have ten votes, and qualified under the provisions of this Article, shall have an additional ten votes if either of the under-noted criteria is fulfilled
    - a. Successors to deceased members are eligible for promotion to Full membership if they meet the same earnings criteria as publisher members. However, successors are not eligible for appointment to the Board of Directors, nor are they entitled to the fifty additional votes on a poll or postal ballot (note 5) unless also qualifying for Full membership as a writer or publisher in their own right
    - b. To qualify for additional Full Member Votes, a member must have aggregate COSBOTS and previous CMO earnings of 10 times the full membership criterion as at the preceding 30 June, during the 8 years or less up to the preceding 30 June. The earnings required are P13, 486.90 (writer) and P53, 947.60 (publisher)
- 7.3 A Candidate Member is entitled to the following:
  - i. Annual Financial Statements/ Audited Accounts
  - ii. Annual reports of COSBOTS
  - iii. Annual General Meeting Minutes
  - iv. Auditors report
  - v. To attend AGM and to vote
- 7.4 An associate member and a full member are entitled to the following:
  - vi. Annual Financial Statements/Audited Accounts
  - vii. Annual reports of COSBOTS
  - viii. Annual General Meeting Minutes
  - ix. Eligible to nominate or be nominated to Board
  - x. Auditors report
  - xi. To attend AGM and to vote

## **RULE 8**

### **Membership Fees**

Registration shall not be subject to a fee for membership to be effected.

## **RULE 9**

### **Withdrawal of Membership**

- 9.1 Membership shall expire at the end of the period for which Copyright subsists in all works for which the member is entitled to royalties
- 9.2 A member shall, upon reasonable notice of not less than 30 days of his/her intention to do so, have the right to withdraw his/her membership of the Society or the rights assigned to the Society in respect of any of his/her works. In execution of his/her right to withdraw his/her membership, a member shall do so in writing to the Society's Board. Upon approval of a member's withdrawal the Society shall deduct the amount accruing from any liabilities to the Society.
- 9.3 The Board may at its discretion resolve that the member's notice referred to in 9.2 shall only take effect from the end of the financial year immediately following the giving of the notice and The Society shall provide the member with written reasons for so resolving.

## **RULE 10**

### **Termination of membership**

Termination of membership comes into effect under any one of the following circumstances:

- 10.1 Upon the death of a member, the member's beneficiaries shall however, continue to receive royalties for:
  - i. For 50 years after the death of the member.
  - ii. For joint ownership, for 50 years after the death of the last owner of copyright to survive.
  - iii. In case of audio-visual and collective work, for the remaining period of the 50 years from the death of the copyright owner.
  - iv. In case of work/s of applied arts, for the remaining period of the 25 years from the death of the copyright owner. NB (economic and moral rights of work of applied arts are protected for 25 years from the making of the work Section 10 (5) of the Copyright and neighbouring Rights Act CAP 68:02).
- 10.2 Upon investigation and findings that a member has been involved in case(s) of gross misconduct and lack of adherence to The Society's Rules and The Society's Constitution, such as obtaining of membership through false information.
- 10.3 Upon misconduct of a member which has resulted in some financial liabilities to The Society, The Society shall deduct the amount accruing from the liability.
- 10.4 Upon dissolution or liquidation of a member where such member is a legal entity
- 10.5 Provisional and Associate writer membership may be terminated if no royalties at all are credited to the writer over a five-year period. Provisional publisher members whose royalties have not exceeded an aggregate of P449.60 over five years may also be terminated

### **RULE 11**

#### **Submission of reports to the Copyright office**

- 11.1 The Society shall submit to the Companies and Intellectual Property Authority:
  - i. A report of its operations and performance during the year
  - ii. A copy of audited financial statements for the year
  - iii. A copy of other reports as may be requested by the Copyright office
- 11.2 The Society shall keep proper book of accounts, annual reports and audits and shall immediately suspend an officer who has been indicted of committing an offence relating to this matter.

### **RULE 12**

#### **Contradictory Documents**

When documentation provided by sister-society/ies or affiliated organizations are in contradiction with documentation in The Society's possession, The Society shall inform the concerned society or affiliated organization accordingly and request clarification.

### **RULE 13**

#### **Documentation used**

The Society recognises documentation details and information for its distribution purposes as follows:

- 13.1 The meta data message suites used by CISAC and IFPI that it has received from Affiliated Organisations.
- 13.2 The works international database and the interested party information lists of members with their complementary information that it has received from Affiliated Organisations.
- 13.3 Other international databases, tools and standards developed by CISAC and IFPI in the framework of the implementation of their standard and rules.
- 13.4 All other communication that The Society has received without reservation from Affiliated Organisations.

### **RULE 14**

#### **Owners of copyright and neighbouring rights works**

These distribution rules relate to the rights assigned for royalties based on the documentation of those who participated in the creation and/or recording of the work or its publication, namely:

- 14.1 The author, the artist, the publisher in the case of artistic works

- 14.2 The composer, the lyricist, the adapter, the arranger, the publisher, the sub-publisher in the case of musical works
- 14.3 The arrangers, the authors, the adapters, the publishers, the sub-publishers, the translators and their heirs or successors in title share in the distribution according to the terms of the agreement between them.
- 14.4 The performer/s and producer/s in the case of sound recordings.
- 14.5 The arrangers or the adapters share in the products from the contribution in the protected works that they arrange or adapt in as far as the authors or publishers of the adapted or arranged works have provided in the written Agreement.

## **RULE 15**

### **Distribution Classes**

All royalties due to the national and foreign authors as well as to the performing artists and producers of musical, other artistic works and sound recordings shall be distributed in accordance with Annex 01(attached)

## **RULE 16**

### **Distribution Keys – Musical Works**

- 16.1 The authors and the publishers can make an agreement by contract on the amount of royalty shares each member shall receive with reference to the copyright in their musical works.
- 16.2 In distributing the royalties to its members and affiliated organizations, The Society shall take into account the percentage shares reflected in the members' contracts with the understanding that the authors' shares shall not equate in total amount to less than 50% of each musical work and the publishers' shares shall not exceed in total greater than 50% of a musical work.
- 16.3 However if members' contracts are not compliant with international conventions as specified in Annexure 02, 03, and 04, members shall then be requested to correct this state of affairs.
- 16.4 The international standards ratios represented in Annexure 02, 03 and 04 indicate that the publisher gets an agreed percentage.
- 16.5 In case there is sub-publisher, the original publisher and the sub-publisher shall be entitled to a maximum of half the value in a musical work, however all the shares shall be kept in accordance with international standard rates as outlined in Annexure 02, 03 and 04

### **Distribution Keys – Sound Recordings**

- 16.6 The performers and producers can make an agreement by contract on the amount of royalty shares each party shall receive with reference to the neighbouring rights in the sound recordings.
- 16.7 In distributing the royalties to its members and affiliated organizations, The Society shall consider the percentage shares reflected in the members' contracts with the understanding that the performers and producers shall participate on a 50/50 basis in royalties attributable to any sound recording.
- 16.8 There are recognized two main categories of performers as follows:
  - i. Featured Performer - an individual Performing Artist in whose name the CD/track was recorded, or a member of a band and who made a performing contribution to the recorded performance; and
  - ii. Non-Featured Performer is a Performing Artist who has been engaged for a fixed period of time, customarily known in the industry as a session musician, specifically to make one or more recorded backing performances which subsequently are included in the sound recording. This may include a studio producer who makes a performing contribution to the recorded performance.
- 16.9 Where there is more than one performer on a single sound recording The Society shall, in the absence of an agreement between performers, distribute the royalties in accordance with Annexure 5 below.
- 16.10 Where the some or all of the performers are a member of an ensemble or a choir then The Society may allocate and distribute the aggregate of such Performers' shares to a nominated the person or entity responsible for the administration of the ensemble (or choir).

## **RULE 17**

### **Holding Account**

- 17.1 The Society shall establish a Holding Account that shall be used to hold any share of the distributable amount which cannot be allocated or distributed for reasons including:
- i. The Society has lost contact with the member concerned
  - ii. The qualified person entitled is currently not a member
  - iii. Where the member, the relevant copyright owner or his agent to the royalties' amount is not available or easily ascertainable
  - iv. Where there is a dispute as to the entitlement
  - v. Where there is inadequate data for apportionment of the funds
- 17.2 Funds placed in the Holding Account as stated in item 17.1 above, shall be held for a period not exceeding **TWO (2) years**.
- 17.3 The Funds placed in the Holding account shall be further segregated according to genres of work type, namely musical works, sound recordings, literary works etc.
- 17.4 The Society shall engage the best efforts to have the amounts allocated to entitled persons within the shortest possible period. However, amounts which remain in the Holding Account at the expiration of the holding period shall be added to the collected royalties and distributed to members and affiliates.

## **RULE 18**

### **Use of national works without documentation**

When a work without any documentation is identified to the name of a right holder who is a member of The Society, The Society will inform the right holder that one of his works has been exploited. The right holder will then be paid as soon as he/she has provided the relevant documentation.

## **RULE 19**

### **Use of foreign works without documentation**

- 19.1 If at the time of distribution, the Society has no documentation on a performed or broadcast work, but if the original rightsholder can be identified as a member of a Sister Society or persons who have conferred a mandate to that society, the total royalty payments due for the work shall be paid to the Affiliated Organisation . The latter will carry out the distribution based on the documentation in its possession.
- 19.2 If there is no documentation on a work recorded on sound/audio-visual carriers at the time of distribution, but the composer or publisher, performer or producer or other rights holder can be identified as a member or right holder of an Affiliated Organisation, then the Society will send the royalties to the society of the composer or the publisher, performer or producer or rightsholder. This society will then carry out the distribution using the documentation in its possession.
- 19.3 The enquiry-lists shall be restricted to those works having only a minimum sum that the Society has determined; thus, works with sums above 300 Botswana Pula (BWP) should consequently always be included in the said lists. It shall be assumed that the Sister Societies are not able to help in identifying the works or their authors, publishers, performers, or producers if the enquiries remain unanswered after a period of 3 months.
- 19.4 When the Society knows the name of the right holder without necessarily being sure of the society he/she belongs to due to incomplete and insufficient information, it must send available information to the different foreign societies, detailing the titles of the concerned works so that the societies, if the case arises, can inform the Society of the works that it has the right to claim: the "Fiche Internationale" and the Interested Party Information (IPI) database or other international "meta data formats and databases" will be used for such identification.
- 19.5 All national tax formalities shall be taken into consideration during the allocation of royalties to members; The Society will ensure with the Botswana Unified Revenue Services (BURS) and its Affiliated Organisations that all the formalities are satisfied.

## **RULE 20**

### **Deductions for Administration Costs of The Society**

- 20.1 We recover our operating costs from the revenue we collect. Because some revenue sources cost more to operate than others, our operating costs also vary. To reflect this, we apply the administration costs to the revenue collected.
- 20.2 Our admin costs cover data collection and processing costs for the revenue source, plus our general operating costs. These general costs include many essential activities such as

maintaining a database of copyright information, negotiating with industry bodies, and issuing licences so that organisations can use licensed music.

- 20.3 We apply our admin cost to gross licence fee to leave a net distributable revenue, which is then used in subsequent royalty calculations.

#### **RULE 21**

##### **Deductions for social and cultural fund**

Deductions will be made in respect of the social and cultural fund of The Society, to facilitate undertaking Corporate Social Responsibility programs. These conditions shall be mentioned in the contracts drawn up between The Society and its Affiliated Organisations. The society shall only set aside up to ten percent (10 %) of the amounts collected for the pursuit of social and cultural purposes.

#### **RULE 22**

##### **Reciprocal agreements**

The Society shall enter into Reciprocal Agreements, and other representation agreements with Affiliated Organisations for the interest of its members and shall avail information regarding reciprocal representation with other societies to its members, limited however to contractual obligations.

#### **RULE 23**

##### **Enquiries about distribution/s**

The Society shall entitle, among its members and within its contracts of reciprocity and other Affiliated Organisations to be informed about its distribution operations, and shall ensure Sister Societies or Affiliated Organisations reciprocate in the same manner (that the distribution is calculated on the basis of the program returns received and/or drawn up and the documentation on the works). The Society shall ensure that it has the same right vis-à-vis any other Sister Society when signing reciprocal representation agreements.

#### **RULE 24**

##### **Royalties received from foreign Sister Societies**

Upon receipt of royalties from foreign Sister Societies the Society shall deduct a 5% handling charge intended to cover for administrative costs of The Society. The royalties received shall be distributed as outline in rule 16, as soon as practically possible to the members of The Society according to the information on the usage of works received.

#### **RULE 25**

##### **Group Membership**

25.1 Membership shall be on individual basis. Members registering as groups shall also be required to register as individuals

25.2 When group members register as individuals, they shall be required to indicate the percentage of shares stated in their agreement held by each group member; the Society shall distribute and credit the royalties into each group member's account.

#### **RULE 26**

##### **Resolution of disputes**

All disputes regarding the distribution of royalties shall be settled before an Arbitration panel as provided by Section 33A of the Copyright and Neighbouring Rights Act CAP 68:02

#### **RULE 27**

##### **Multiple memberships**

A member cannot obtain membership in more than one Collection Society in the same jurisdiction (refer to CISAC)

#### **RULE 28**

##### **Method of Payment of Royalties**

Payment of royalties shall be either to the bank account of the member or to an electronic wallet or mobile money account created for this purpose.

#### **Rule 29**

##### **Value point**

Distribution are generally paid using fixed point value (FPVs). This represent the value of a single unit of music usage for that distribution and mean that music can be valued equally throughout the period. In its simplest form an FPV will be calculated as follows:

Value point: Total annual station distributable revenue ÷ total annual station music minutes

### Annex 01

#### The Society Distribution Classes

Name of distribution class/sub-class	Acronym	Date of Distribution
<b>Essential User Class</b>	<b>EPB</b>	
I. Television Broadcasters	I. TVB	Annually
II. Radio Broadcasters	II. BRS	
III. Live performances at concerts and festivals	III. LPF	
IV. Cable operators & satellite	IV. COS	
V. Music shops	V. MSJ	
VI. Advertising jingles	VI. ADJ	
VII. Festivals & night clubs	VII. FCDS	
VIII. Juke box, dancing & singing shows	VIII. JDSS	
<b>Important User Class</b>	<b>RTB</b>	
I. Bars & restaurants	I. RSR	Annually
II. Cabaret/dinner dance, gala events & award functions	II. DEF	
III. Beauty pageants, Fashion shows, circus and events	III. PFCE	
IV. Music theatres, music tutors & Gymnasium	IV. TTG	
V. Others	V. ORTB	

Name of distribution class/ sub-class	Acronym	Date of Distribution
<b>Incidental User Class</b>	<b>IBM</b>	
I. Trade fairs, exhibitions & other events	I. TFE	Annually
II. Hotels, lodges, waiting halls, beauty and hair salons, banking halls etc.	II. HWBS	
III. Shops, chain stores, boutiques and airport terminals	III. SCBA	
IV. Music on hold, interval music in cinemas, and cinematographic projections	IV. HICC	
V. Public transport providers	V. PTP	
VI. Corporate institutions & other others	VI. CIBM	

incidental b/ground music		
Mechanical Recording Rights Class	MRR	
I. Sound	I. SRD	Annually
II. Audio	II. AMO	
III. Downloads	III. RPOnl	

### Annex 02

#### Distribution Keys for (musical) Published Works

CASE	OWNERS OF RIGHTS	R.P.P (Performance Rights)	M.R.R. (Reproduction Rights)
01	Composer Publisher	from 50% to 85% from 15% to 50%	from 50% to 85% from 15% to 50%
02	Composer Arranger Publisher	from 35% to 50% from 16.6% to 35% from 15% to 50%	from 35% to 50% from 16.6% to 35% from 15% to 50%
03	Author Composer Publisher	from 25% to 35% from 25% to 35% from 15% to 50%	from 25% to 35% from 25% to 35% from 15% to 50%
04	Author Composer Adapter Publisher	from 16.66% to 35% from 21.875% to 35% from 10% to 22.2% from 15% to 50%	from 16.66% to 35% from 21.875% to 35% from 10% to 22.2% from 15% to 50%
05	Author Composer Arranger Publisher	from 25% to 35% from 25% to 35% from 10% to 20% from 15% to 50%	from 25% to 35% from 25% to 35% from 10% to 20% from 15% to 50%
06	Author Composer Adapter Arranger Publisher	from 25% to 35% from 21.875% to 35% from 10% to 16.6% from 10% to 16.6% from 15% to 50%	from 25% to 35% from 21.875% to 35% from 10% to 16.6% from 10% to 16.6% from 15% to 50%

### Annex 03

#### Distribution Keys for Sub-(musical) published work

CASE	OWNER OF RIGHTS	R.P.P. (Rights of Public Performances)	M.R.R. (Mechanical Recording Rights)
01	Author Composer Publisher Sub-Publisher	from 25% to 35% from 25% to 35% from 10% to 25% from 15% to 50%	from 25% to 35% from 25% to 35% from 10% to 25% from 15% to 50%
02	Composer Publisher Sub-Publisher	from 50% to 70% from 15% to 25% from 15% to 50%	from 50% to 70% from 15% to 25% from 15% to 50%
03	Author Composer Arranger Publisher Sub-Publisher	from 16.66% to 25% from 16.66% to 35% from 10% to 16% from 10% to 25% from 15% to 50%	from 16.66% to 25% from 16.66% to 35% from 10% to 16.66% from 10% to 25% from 15% to 50%

04	Author Composer Arranger Publisher Sub-Publisher	from 16.66% to 35% from 16.66% to 25% from 10% to 16.66% from 10% to 25% from 15% to 35%	from 16.66% to 35% from 16.66% to 25% from 10% to 16.66% from 10% to 25% from 15% to 35%
05	Author Composer Adapter Arranger Publisher Sub-Publisher	from 13% to 35% from 13% to 25% from 8.3% to 13% from 8.3% to 13% from 10% to 25% from 25% to 50%	from 13% to 35% from 13% to 25% from 8.3% to 13% from 8.3% to 13% from 10% to 25% from 25% to 50%
06	Composer Arranger Publisher Sub-Publisher	from 25% to 50% from 10% to 25% from 10% to 1% from 15% to 50%	from 25% to 50% from 10% to 25% from 10% to 25% from 15% to 50%

#### Annex 04

##### Distribution Keys for Musical Works (Unpublished Works)

CASE	OWNERS OF RIGHTS	R.P.P. (Rights of Public Performances)	M.R.R. (Reproduction Rights)
01	Composer	100%	100%
02	Author Composer	50% 50%	50% 50%
03	Compose Arranger	from 70% to 80% from 20% to 30%	from 70% to 80% from 20% to 30%
04	Author Adapter Composer	from 37.5% to 50% from 20% to 25% from 37.5% to 50%	from 37.5% to 50% from 20% to 25% from 37.5% to 50%
05	Author Composer Arranger	from 37.5% to 50% from 37.5% to 50% from 20% to 25%	from 37.5% to 50% from 37.5% to 50% from 20% to 25%
06	Author Composer Arranger Adapter	from 30% to 50% from 30% to 50% from 10% to 20% from 10% to 20%	from 30% to 50% from 30% to 50% from 10% to 20% from 10% to 20%

#### Annex 05

##### Distribution Keys for Sound Recordings

CASE	ROGHTS HOLDERS	Performance Rights	Notes
01	Featured Single Performer Single Producer	50% 50%	Default Rule
	Featured Group of Performers Single Producer	50% 50%	Performers' splits per group contract/s or pro-rata if no contract
	Featured Single Performer Non-Featured Performers Single Producer	50% 50%	Performers' splits per contracts up to maximum of 50%
04	Featured Single Performer Non-Featured Performers Single Producers	65% of 50% = <b>32.5%</b> 35% of 50% = <b>17.5%</b>	Default – no contract between Performers



		50%	
05	Featured Single Performer Multiple Producers	50% 50%	Producers' splits per contract up to maximum of 50%
06	Featured Single Performer Multiple Producers	50% 50%	Producers' splits pro-rata if no contract up to maximum of 50%

Other combinations of Performers and Producers will follow above split principles.