



# **FINE MUSIC RADIO ANNUAL COMPLIANCE REPORT**

**MARCH 2018**

## **2016/2017 ANNUAL COMPLIANCE REPORT**

### **FINE MUSIC RADIO**

**Licence Period: 27 November 2013 to 26 November 2018**

#### **1. PREFACE**

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution<sup>1</sup>, the ICASA Act<sup>2</sup>, the Electronic Communications Act<sup>3</sup> (ECA) and the Broadcasting Act<sup>4</sup> to regulate broadcasting activities in South Africa in the public interest. Among the responsibilities of the Authority is the task to ensure compliance by broadcasting service licensees with the terms and conditions of their licence and any relevant legislation and/or regulations.

The purpose of the report is to give account of Fine Music Radio's compliance with the terms and conditions, as set out in its licence, for the 2016/2017 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Community Participation, Programming, Format, News and Information, Local Content Obligations, Language(s), South African Music Regulations and Regulations Regarding Standard Terms and Conditions. The basis of the Authority's findings is based on Fine Music Radio's submissions and the active monitoring of the Licensee's programme recordings for two (2) weeks ending on Sunday 26 February 2017.

#### **2. BACKGROUND**

Fine Music Radio is a Class Sound Broadcasting Service Licensee which provides service to a Jazz-loving community of interest in the Greater Cape Metropolis and surrounding areas in the Western Cape. Fine Music Radio is part of the Licensees whose service licences were converted in 2008 and has been in existence for more than ten (10) years.<sup>5</sup>

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<sup>1</sup> The Constitution of the Republic of South Africa, No 108 of 1996

<sup>2</sup> Act No. 13 of 2000, as amended

<sup>3</sup> Act No. 36 of 2005

<sup>4</sup> Act No. 4 of 1999

<sup>5</sup> <http://www.brcsa.org.za/brc-ram-radio-listening-jul-16-dec-16-oct-16-mar-17/>

### 3. COMPLIANCE ASSESSMENT

#### 3.1 Licensee

Clause 1 of Fine Music Radio's Broadcasting Service Licence<sup>6</sup> reads as follows:

*"The Licence is issued to:*

*1.1 Name of Company/Entity: Fine Music Radio.*

*1.2 Name of the Station: Fine Music Radio.*

*1.3 Control of the Licensee: Control shall vest in the Board of Directors of a Section 21 Company known as Fine Music Radio."*

In the year under review, the Authority received no notifications indicating a change in the Licensee's name and/or control of the Licensee.

**The Licensee was found to be in compliance with clauses 1.1, 1.2 and 1.3 of its licence.**

#### 3.2 Licence Area

Clause 3 of the licence prescribes as follows:

*"The Licensee shall provide services to Greater Cape Metropolis and surrounding areas in the Western Cape Province as set out in the Licensee's radio frequency spectrum licence<sup>7</sup>."*

During the year under review, the Authority received no reports or complaints indicating that the radio station has interfered in areas that are outside its coverage area.

On the basis that the Authority received no complaints regarding Fine Music Radio's interference outside its licence area, **the conclusion is that the Licensee is compliant with clause 3 of its licence.**

#### 3.3 Community

Clause 4.1 of the licence provides as follows:

*"The Licensee shall provide services to a Jazz-loving community of interest residing within the geographic coverage area specified herein".*

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<sup>6</sup> Appendix A: Fine Music Radio's Broadcasting Service Licence

<sup>7</sup> Appendix B: Fine Music Radio's Frequency Spectrum Licence

Fine Music Radio maintains that it still provides service to a Jazz-loving community residing within the Greater Cape Metropolis and the surrounding areas in the Western Cape Province.

**The Licensee was found to be in compliance with clause 4.1 of the licence.**

Clause 4.2 of the licence stipulates that:

*"The Licensee shall provide for the participation of community members in the affairs of the station in the following ways:*

*4.2.1 The Licensee shall hold at least two (2) meetings annually with its community focusing on programming and programming policies of the station."*

*4.2.2 The Licensee shall furnish the Authority with proof of such meetings as well as the attendance thereof by members of the community.*

The Licensee's annual submissions give no indication that it held *"at least two (2) meetings focusing on programming and programming policies of the station"* as prescribed by clause 4.2.1 of its licence.

**The Licensee failed to comply with clauses 4.2.1 and 4.2.2 of its licence.**

*4.2.3 The Licensee shall hold Annual General Meetings (AGM) for the following purposes:*

*4.2.3.1 To provide feedback on the Licensee's compliance with licence conditions;*

*4.2.3.2 To provide feedback on the Licensee's operational and financial performance, and*

*4.2.3.3 To elect members of the controlling structure, e.g. Board of Directors, Truste etc. subject to the licensee's founding documents".*

Fine Music Radio's Annual General Meeting (AGM) was convened in October 2016. As proof of the mentioned AGM, Fine Music Radio submitted an attendance register<sup>8</sup> however no minutes of the AGM were submitted. On the basis that the Licensee did not submit minutes of the AGM it is very difficult for the Authority to assess whether the meeting held in October 2016 was in fact an AGM and whether the required feedback with regards to operational and financial performance of the Licensee was discussed at the said AGM. The fact that no additional information was submitted to the Authority to demonstrate

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<sup>8</sup> Appendix C: Attendance Register to Fine Music Radio's AGM

compliance with the above requirements, a conclusion of compliance with clause 4.2.3 of the licence cannot be reached.

**The Licensee failed to comply with clause 4.2.3 of its licence.**

### **3.4 Programming**

Clause 5.1 of the licence provides that the Licensee shall provide programming as follows:

#### **3.4.1 Local News and Information:**

Clause 5.1.2 of Radio Islam's licence provides that:

*"The Licensee shall broadcast 50% local, 25% national and 25% international news per day. This shall include news from the community produced by the station on issues affecting the identified community."*

Fine Music Radio's submissions indicate that the Licensee schedules at least five (5) news bulletins per day. The Authority's monitoring exercise confirms the submissions made by the Licensee. Further, the monitoring exercise detected that in an average day, the Licensee schedules at least two (2) Afrikaans News Bulletins and three (3) English News Bulletins. However, the monitoring exercise uncovered that the bulk of the Licensee's news output was national news. Local and international news were detected although on a smaller scale in comparison to that of national news. This finding means that the Licensee is not meeting its required quota in terms of news originality breakdown.

Among the news stories covered for the period under review were excerpts from certain broadcasts, as follows:

- *The Department of Water and Sanitation is said to be 4.3 Billion Rand in the red, leaving hundreds of contractors unpaid for at least 7 months. City Press reports that senior executives from National Treasury, the Department and a key Water Board official feel that cabinet should place the department under administration because internal controls, project management and contract management have collapsed. The publication says the Department has unpaid invoices amounting to 1.7 Billion Rand for the current financial year.*
- *Hawks boss, Berning Ntlemenza says Investigator, Paul O'Sullivan will stop at nothing to tarnish the integrity of the justice system. This comes after a report by O'Sullivan titled: Joining the dots, which was released yesterday deals with the*

*alleged capture of the criminal justice system. Berning Ntlemeza says, O'Sullivan is trying to turn the people of this country against the government credible institutions and private individuals that have the best interest of justice at heart and that he is trying to reverse the gains the country has made since 1994.*

- Meanwhile, Paul O'Sullivan's assistant, Sarah Jane Trent, has been released on R5000 bail after she launched an urgent court application. According to reports, she was arrested because she had pretended to be an official of the Independent Police Investigative Directorate (IPID). Civil rights organisations, Afriforum, believes Trent's arrest was an effort by the police authorities to intimidate and to harass her.*
- The Office of Gauteng Premier, David Makhura, has strongly denied allegations that a letter sent by Wits University Occupational Therapist student who worked at Esidimeni Centre as part of their studies. The department was allegedly alerted, more than a year ago that the deinstitutionalisation of patients from Germiston's Waverly Care Centre would turn into a disaster. 94 mental patients died after being transferred to 27 unlicensed non-governmental organisations across the province.*
- The Nelson Mandela Metropolitan University in the Eastern Cape will tighten up security after petrol bombs went up on campus over the weekend. The Police's, Johan Redder, says the entrance to NMMU's South Campus was vandalised and Graffiti was written on the walls proclaiming: ANC MUST FALL; ZUMA MUST FALL and FEES MUST FALL. The University's Vice Chancellor, Derrick Swartz, says the incident is unacceptable and has no place in a democratic order.*

On the basis that Fine Music Radio's news originality breakdown does not meet the quota prescribed; **the Authority concludes that the Licensee does not comply with clause 5.1.2 of its licence.**

### **3.4.2 South African Music Content:**

Clause 5.1.3 of Fine Music Radio's licence provides as follows:

*"South African Music Content: 40%."*

According to Fine Music Radio's programming log sheets, the Licensee plays approximately 40% South African Music content on a monthly average. The Authority's monitoring exercise found that Fine Music Radio plays at least 44% of South African Music. The

amount of South African music observed Included live cross overs to concert venues in and around the Cape Metropolis and live interviews of South African composers and jazz musicians.

Music from the following jazz composers and artists was found during the monitoring of Fine Music Radio's programming format: *Alan Gordon, Derek Hutton, Judith Sephuma, Gloria Bosman, Merton Barrows, Melanie Scholtz, Sibongile Khumalo, Ernie Smith, Don Laka, Andile Yenana, Bheki Mseleku, Marcus Wyatt, Eroll Dyers, Connie De Villiers, Pierre Van Pletzen, Amanda Lamprecht and many other jazz groups.*

**Fine Music Radio was found to be in compliance with clause 5.1.3 of the licence.**

#### **3.4.3 Talk v Music:**

Clause 5.1.4 of the Fine Music Radio's Licence prescribes that the Licensee's format shall be:

*"10% talk and 90% music."*

Fine Music Radio submits that their programming format is as per the prescripts made in the licence in this regard.

In the year under review, the Authority's monitoring exercise found that Fine Music Radio broadcast mostly music. The Licensee's talk programming is only attributed to presenters introducing music items and news broadcasts. The monitoring exercise found that in a typical three-hour show, the licensee would schedule approximately twenty (20) minutes of talk mostly for news and information.

In essence Fine Music Radio's programming format is approximately 90% music and 10% talk.

**The Licensee was found to be in compliance with clause 5.1.4 of the licence.**

#### **3.4.4 Language(s) of Broadcast:**

Clause 5.1.5 of the licence provides that Fine Music Radio's languages of broadcast shall be:

- (a) *"English 70%; and*
- (b) *Afrikaans 30%."*

The Licensee's talk content makes up approximately 10% of its overall programming output. In essence, the Licensee has approximately 100 minutes of talk which include the Licensee's news bulletins. The monitoring exercise found that Fine Music Radio provides programming content in both languages of broadcast. The programme recordings detected English as a dominant language of broadcast. The presenters use both English and Afrikaans as languages of broadcast.

The Authority calculated Fine Music Radio's use of the licenced languages to be 70% English and 30% Afrikaans split.

**In the year under review, Fine Music Radio was found to be in compliance with clause 5.1.5 of its licence.**

Clause 5.2 of the licence states that:

*"The Licensee shall keep a log of programmes broadcast which must be submitted on a monthly basis to the Authority. A pro-forma of the log to be kept will be supplied by the Authority."*

Fine Music Radio keeps a programming log sheet<sup>9</sup> and submits same on a monthly basis. In the event where the Licensee is late with its submission, the Authority is informed of the reasons.

**The Licensee complies with clause 5.2 of the licence.**

#### **4. REGULATIONS**

##### **4.1 Code on People with Disabilities**

Regulation 3.1 (a) of the Code for People with Disability of 2007 provides as follows:

*"Broadcasting service Licensees must ensure that their services are made available and accessible to people with disability."*

Fine Music Radio's services and premises do not discriminate against people with disabilities. The Licensee's model is for the service of jazz loving people and there is no way that music could be discriminatory to any person of different physical orientation.

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<sup>9</sup> Appendix D: Latest Programme Log sheet submitted Fine Music Radio



**The Licensee was found to be in compliance with the above mentioned regulation.**

#### **4.2 Compliance Procedure Manual – Form 12A**

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A which reports on all complaints received in the course of each financial year. In the year that is currently under review, Fine Music Radio submitted its Form 12As<sup>10</sup> indicating that the Licensee received no complaints.

**The Licensee was found to be in compliance with the Compliance Procedure Manual.**

#### **4.2 South African Music Content Regulations**

Regulation 3.3 of the Regulations on South African Music Content as published on 31 January 2006 provides that:

*"Every holder of a community sound broadcasting licence to which these regulations apply must ensure that after eighteen months of the gazetting of these regulations, a minimum of 40% of the musical works broadcast in the performance period consist of South African music and that such South African music is spread reasonably evenly throughout the said period"<sup>11</sup>.*

The Authority's monitoring exercise found that Fine Music Radio plays at least 44% South African Music in its programme schedule. The amount of South African music observed included live cross overs to concert venues in and around the Cape Metropolis and live interviews of South African composers and jazz musicians.

Music from the following jazz composers and artists was found during the monitoring of Fine Music Radio's programming format: *Alan Gordon, Derek Hutton, Judith Sephuma, Gloria Bosman, Merton Barrows, Melanie Scholtz, Sibongile Khumalo, Ernie Smith, Don Laka, Andile Yenana, Bheki Mseleku, Marcus Wyatt, Eroll Dyers, Connie De Villiers, Pierre Van Pletzen, Amanda Lamprecht and many other jazz groups.*

**Fine Music Radio was found to be in compliance with the South African Music Content Regulations.**

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<sup>10</sup> Appendix E: Fine Music Radio's Complaints Report.

<sup>11</sup> Appendix F: Regulations on South African Music Content

### **4.3 Regulations regarding Standard Terms and Conditions for Class Licensees**

Regulation 2 (1) (d) of the Regulations Regarding Standard Terms and Conditions for Class Licensees<sup>12</sup> provides two fundamental regulations that are constantly and continuously used to measure a Licensee's compliance. The two regulations are Regulation 2(1) and the sub clauses, along with Regulation 9 in its entirety.

There has been recent changes in the Licensee's contact person and contact details. The retirement of Ms Victoria Cawood saw Mr Mark Jennings taking over from her. Fine Music Radio submitted a notice to the Authority in the prescribed format. The Authority has not finalised the process, but will duly notify the Licensee upon completion.

Fine Music Radio always makes it a point that all information required of them is submitted as per the given format and by the given deadline. In the event where the Licensee cannot meet the required deadline, they make it a point to request for an extension to be allowed to submit the required information.

**Fine Music Radio was found to be in compliance with Regulations 2(1) and 9 of the Standard Terms and Conditions for Class Licensees.**

## **5. CONCLUSION**

In the year under review, Fine Music Radio sufficiently complied with its licence terms and conditions and relevant Regulations. There are areas of concern in terms of their compliance with clauses 4.2 and 5.1.2. The Authority will alert the Licensee of the findings and provide the necessary assistance where required.

## **6. TERMS OF REFERENCE**

**Appendix A:** Fine Music Radio's Broadcasting Service Licence;

**Appendix B:** Fine Music Radio's Frequency Spectrum Licence;

**Appendix C:** Attendance Register to Fine Music Radio's AGM;

**Appendix D:** Latest Programme Log sheet submitted by Fine Music Radio;

**Appendix E:** Fine Music Radio's Complaints Report;

**Appendix F:** Regulations on South African Music Content; and

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<sup>12</sup> Appendix G: Regulations regarding the Standard Terms and Conditions

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