

# Law, Communications, Consumer Protection and Council Support

This division comprises Law, Communications, Consumer Protection and Council Support (LCCC).

## Law

With the core function of the Authority being licensing and rulemaking, the Legal Department plays a key support role. This role is mainly in the form of provision of legal advice on various issues ranging from broadcasting law, telecommunications law, constitutional and administrative law, drafting and/or vetting of regulations and contracts and management of litigation.

The Legal unit also provides legal support to Council, BMCC, management and committees of Council.

### **Islamic Unity Convention v ICASA and the South African Jewish Board of Deputies (Constitutionality)**

In June 1998, the Jewish Board of Deputies lodged a complaint against the Islamic Unity Convention, broadcasting as Radio 786, in which it was alleged that a certain broadcast contravened the Code of Conduct for broadcasters in that amongst others, it denied the occurrence of the holocaust of Jewish people by the German Third Reich. Radio 786 then instituted various proceedings which ultimately led to the Constitutional Court ruling that the provision of the Code of Conduct for broadcasters under which the complaint was lodged was unconstitutional in that it offended the provisions of section 16 of the Constitution which deals with the right to freedom of expression. The Constitutional Court held that in adjudicating the complaint, the BMCC must use the test contained in section 16(2) of the Constitution, which deals with unprotected speech. The BMCC subsequently made the necessary arrangements for the adjudication of the complaint, which was scheduled to be heard from 13 to 17 March 2006. Radio 786, however, subsequently instituted a constitutional attack against various provisions of the IBA Act. A hearing date has not yet been allocated by the Registrar of the Witwatersrand Local Division.

### **Islamic Unity Convention v ICASA and the South African Jewish Board of Deputies (Urgent Application)**

Subsequent to the BMCC setting the hearing for the complaint lodged by the Jewish Board of Deputies in June 1998, which was scheduled to be heard from 14 to 17 March 2006, the Islamic Unity Convention launched an urgent application at the Witwatersrand Local Division to have the hearing postponed primarily for the reason that there was a pending constitutional attack on the provisions of the IBA Act under which the complaint was to be adjudicated and that it was not in a position to defend itself against the complaint as it did not have the "charge sheet" or allegation of contravention.



On 9 March 2006 the court dismissed the application with costs and directed that the BMCC hearing should proceed as previously scheduled. The Islamic Unity Convention has applied for leave to appeal against the decision. The BMCC proceeded with the hearing as scheduled but the Convention "walked out" of the proceedings and the complaint was adjudicated in their absence. The BMCC has reserved its judgment.

### **Otherchoice v ICASA and MultiChoice**

The declaratory application in which Otherchoice t/a Don't Panic TV sought an order from the High Court, Transvaal Provincial Division *inter alia*; that it is not required to hold either a broadcasting licence or broadcasting signal distribution licence, in terms of the broadcasting legislations, was dismissed with costs. Otherchoice then launched an application for leave to appeal against the decision, which was later abandoned.

### **Goodnews Community Radio v ICASA and Izwi Lomzantsi**

Goodnews Community Radio (GNCR) review application against ICASA's decision not to grant it a Four-year Community Sound Broadcasting Licence at the Durban Local and Coastal Division of the High Court was dismissed with costs. Goodnews Radio then applied for and was granted leave to appeal to the full bench of the Natal Provincial Division held at Pietermaritzburg. The appeal was dismissed with costs. GNCR has since filed a notice for condonation for appealing after being out of time and a special leave to appeal to the Supreme Court of appeal.

### **Muslim Community Broadcast Trust v ICASA and RAU Radio**

The Trust instituted review proceedings against ICASA's decision not to grant it a Four-year Community Sound Broadcasting Licence at the Witwatersrand Local Division. The court dismissed the Trust's review application with costs and upheld the Authority's decision to grant the licence to RAU radio.



#### **IFM 102.2 v ICASA v Kathorus**

IFM instituted review proceedings against ICASA's decision to refuse the granting of a Four-year Community Sound Broadcasting Licence at the Witwatersrand Local Division. The court set aside the decision of ICASA to grant the licence to Kathorus Community Radio and directed that ICASA must reconsider both IFM and Kathorus's applications afresh.

#### **Radio Rippel v ICASA**

Radio Rippel instituted review proceedings against ICASA's decision to refuse the granting of a Four-year Community Sound Broadcasting Licence, at the Transvaal Provincial Division. A hearing date has not yet been allocated on the matter.

#### **Vaal Community Radio (VCR) v ICASA**

VCR instituted review proceedings against ICASA's decision to refuse the granting of a Four-year Community Sound Broadcasting Licence at the Transvaal Provincial Division. The parties reached an out of court settlement, which was subsequently made an order of court.

#### **Radio Pretoria v ICASA**

Radio Pretoria instituted review proceedings against ICASA's decision to refuse the granting of a Four-year Community Sound Broadcasting Licence at the Transvaal Provincial Division. Subsequent to the hearing date, the court re-opened written arguments on the matter. The court dismissed Radio Pretoria's review application with costs and upheld the Authority's decision. Radio Pretoria applied for leave to appeal against the court's decision. The Authority decided not to oppose the appeal by Radio Pretoria so as to expedite the hearing of the matter at the Supreme Court of Appeal. The parties are in the process of filing the relevant court papers.

#### **Impact Radio v ICASA**

Impact Radio instituted review proceedings against ICASA's decision to refuse the granting of a Four-year Community Sound Broadcasting Licence, which was granted to Mams Community Radio. The parties have reached an out of court settlement.

#### **Bay FM v ICASA**

Bay FM instituted review proceedings at the Witwatersrand Local Division against ICASA's decision not to grant it a Four-year Community Sound Broadcasting Licence and also applied for interim relief allowing it to continue with its broadcasting activities pending the hearing of the review application. The parties are awaiting the allocation of a hearing date by the registrar of the court.

#### **Telkom Limited v AT&T, ICASA and IBM**

The matter was set down for 13 September 2004 and by agreement between the parties, was postponed *sine die*. Telkom also withdrew its application and the relief it sought against IBM. Telkom has, hitherto, not set the matter down for hearing of the review application.

#### **Aerosat cc v ICASA and Two Others**

Subsequent to the Port Elizabeth High Court dismissing with costs the application launched by Aerosat, Aerosat applied for leave to appeal against the decision in June 2005. A hearing date into the application for leave to appeal has not yet been allocated by the Registrar. In an attempt to exert pressure on Aerosat, an application to uplift the stay of the operation of execution of the order, and granting ICASA an order to destroy the impounded equipment, was served to the attorneys of Aerosat. The application prompted an immediate response from Aerosat and a proposition was made to the effect that Aerosat is prepared to withdraw its application for leave to appeal. The Port Elizabeth High Court judgement stands, that the equipment seized, be disposed of and that the proceeds of the disposal be kept in an attorneys trust account pending taxation of the bill of costs. The parties are still negotiating the terms.

#### **AMT Trading 109 BK v ICASA**

The applicant launched an application to compel the Authority to issue 1 000 labels to affix to Samsung Model E700 cellphones. The cell phone handset in question had already been type-approved by the Authority in favour of Samsung South Africa. The parties agreed to hold the matter in abeyance pending the applicant furnishing the Authority with an Electro-Magnetic report, safety report and Radio Frequency report. The applicant has not provided this information and has been issued with an ultimatum to comply or withdraw its application.



#### **Startrack Communications Africa (Pty) Ltd v ICASA**

In 2001 the Authority received an application for a licence from Startrack which was subsequently refused. Startrack then launched an urgent application for interim relief permitting Startrack to use the radio frequencies 1525 to 1559 MHz and 1626.5 to 1660.5 MHz pending the final determination. The application for interim relief was not opposed by the Authority, however the main application was and is still opposed by it. Negotiations between the parties were initiated and it was agreed that the Applicant should apply for a VANS Licence, type-approval of its MT 2000 mobile satellite data gathering system terminal, and a Spectrum Licence and make use of a satellite space segment. Startrack has applied for the necessary licences. The type-approval in respect of its MT 2000 mobile satellite data gathering system terminal as well as the application for a VANS licence have been granted.

#### **Tetramobile Radio v ICASA**

Tetramobile brought an urgent application at the Pietermaritzburg High Court for an order interdicting and restraining the Authority from seizing the Applicant's equipment due to its alleged failure to pay outstanding licence fees amounting to R1, 3 million. The matter was due to be heard on 19 August and 21 September 2005 and was postponed at the instance and request of Tetramobile and tendered the costs occasioned by such postponements. The matter was again set down for hearing on 9 December 2005 and the parties reached an out of court settlement which included Tetramobile paying an amount of R1,3 million in outstanding licence fees.

#### **MTN v ICASA and Cell C**

MTN launched review proceedings against ICASA's decisions at the Witwatersrand Local Division in respect of Cell C's roll-out plans on its community service telephones in areas it deemed not to be under-served as they were mainly situated in urban areas. ICASA

has by agreement withdrawn its opposition of the matter and has filed the record of the proceedings sought to be reviewed.

#### **Cell C v MTN**

Cell C has instituted proceedings against MTN in the Johannesburg High Court for an order declaring *inter alia*; that a call which originates from a Community Service Telephone installed by Cell C in an under-service area in accordance with a roll out plan approved by ICASA constitutes a Community Service Call for the purposes of the interconnection agreement concluded between Cell C and MTN. ICASA has been cited as an interested party.

#### **Vodacom (Pty) Limited v ICASA and Another**

Vodacom instituted proceedings to have the regulations, which amongst others, declared it a major operator, set aside as being invalid. The Authority took a decision to oppose the application on the basis that the application has been brought prematurely as the Authority has not as yet taken any decision on declaring the applicant a major operator. Vodacom has proposed a settlement which the Authority is considering.

#### **Newsforce (Globecast) v ICASA and Telkom**

Newsforce instituted review proceedings at the Witwatersrand Local Division against ICASA's decision to dismiss its points *in limine* raised against Telkom's complaint that it provided an International Telecommunication Service, without the necessary licence in terms of the Telecommunications Act. Newsforce has filed a further set of affidavits to which the Authority has to respond.

#### **COPASA v ICASA and Cell C**

COPASA instituted review proceedings against ICASA's decision to stay the hearing of a complaint pending the outcome of a review application launched by MTN against Cell C in respect of the latter's under-served area roll out of community service telephones. COPASA subsequently withdrew all the relief it sought against ICASA but did so without tendering the costs. The matter was heard from 8 to 11 February 2006, including the question of costs. Judgment has been reserved.

#### **Nothnagel v Raod Accident Fund (RAF) and ICASA**

ICASA was served with a third party notice by the RAF, in accordance with the Uniform Rules of the Free State High Court, wherein a spouse of a late ICASA employee sought to join the RAF and ICASA in an action, where she is seeking compensation for loss of support as a result of a motor vehicle accident in which her husband died. The matter was deferred to ICASA's insurers at the time of the accident, who are opposing the matter. A trial date has not yet been allocated.

#### **Len Marshall v ICASA**

Mr Marshall instituted action for the purported recovery of an

amount to R95 982 in respect of an alleged over-payment to ICASA for licence fees. ICASA is defending the matter. The matter was set down for trial on 5 December 2005, but was postponed at the request of Mr Marshall and a new date is yet to be allocated by the Clerk of the Court.

#### **ICASA v IMVO Technologies**

ICASA has instituted review proceedings to have a tender issued to IMVO Technologies set aside due to several procedural irregularities. IMVO Technologies is opposing the matter.

#### **ICASA v Roswika Digital Solutions (Arbitration)**

ICASA terminated a contract it has with Roswika Digital Solutions resulting in the cancellation being referred for arbitration by the parties to the Arbitration Foundation of South Africa. The parties have agreed to suspend the arbitration pending an application by ICASA to have the contract set aside by the court.

#### **ICASA Logo**

The Registrar of Trademarks has finally approved the ICASA logo as a trademark. It was published in the journal of trademarks for three months for public comment. No objections were received from members of the public and the registration process is now completed.

## Consumer Protection

The 2005/6 financial year was focused at ensuring increased interaction with consumers. The department reached out to the poorest of poor communities.

#### **Public Awareness and Education**

The department continues to conduct outreach programmes in connection with the developments that are taking place in the Communications Sector. Partnerships have been built with ICT stakeholders and government departments; youth associations; organisations for people with disabilities and local municipalities in all provinces. Material has been developed and printed in all official languages.

Pamphlets have been distributed among communities and ICASA has now seen a reduction in the numbers of complaints pertaining to commercial mobile payphones.

#### **Braille Material**

In order to provide access to information for the blind, some of the education material has been converted to Braille. The pamphlet educates the blind about their rights with regards to the provision of telecommunication services.

#### **Type-approved Phones**

The department has developed material informing the public about the importance of ensuring that any telecommunications equipment that they purchase has been type-approved by ICASA. Type-approval ensures that the equipment meets the required safety standards and that there is a guarantee of after sales service. The exercise has resulted in many businesses reporting non-compliance.

#### **Radio Interviews**

Interviews were conducted on Community Radio throughout the country on 93 occasions during the financial year. This means of communicating has now become well established and is set to continue.



#### **People with Disabilities**

The Department, together with mobile operators and the fixed operator, conducted workshops with organisations representing people with disabilities aimed at educating them about services that are available. The problems that were highlighted were associated with access to assistive devices. This problem has been brought to the attention of the Universal Service Agency, which is charged with the administration of the Universal Service Fund. The Authority and all operators, both broadcasting and telecommunications, signed a Code of Conduct aimed at improving access to services and information to people with disabilities. The signing of the code has been seen as a milestone by the Authority and all other stakeholders.

#### **Road Shows**

Road Shows were held in all provinces. The highlight for the past year was a road show in Mount Fletcher in the Eastern Cape. The Department and operators, both telecommunications and broadcasting, were exposed to communities who had still not seen a TV and had never made a telephone call. We hope this area will benefit from the accelerated growth and development initiative. Access to telecommunications services continues to be a problem for communities in rural areas.

**Research and Complaints Handling**

**• Research**

*Call Barring Facility*

Research was conducted on the call barring facility service provided by the mobile phone operators. Meetings were held with representatives from mobile phone operators. This was in an effort to get a thorough understanding of how call barring is implemented by the operators after complaints received from the public. A comprehensive report has been prepared in this regard.

*Telkom's Public Payphones*

Members of the public complained that Telkom telephones did not give change. The problem was first tested randomly and confirmed. The research officer then undertook in-depth research on the matter in all provinces. The outcome of the research were that Telkom public payphones were found to be problematic in all but two provinces. A meeting was then scheduled with Telkom where the problem was discussed. Telkom alluded to there being problems with regard to their public payphones. A proposal on how the problems can be resolved by Telkom is awaited.

**• Complaints Handling**

*Analysis of Complaints Brief Synopsis*

Number of complaints received during this financial year: 708

Number of complaints/files closed: 295 (42%)

Number of complaints/files pending: 413 (58%)

Number of complaints/files brought forward from the previous financial year: 79

Total Number of complaints handled during this financial year: 787

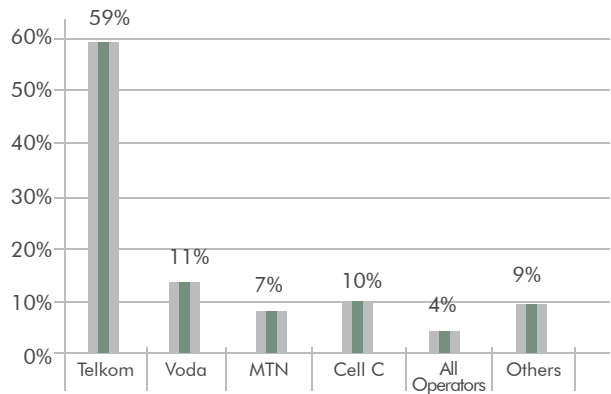
During this financial year the Authority experienced an increase in complaints relating to the following:

- Telkom's Fault Reports which were, according to Telkom's explanation to the department, caused by heavy rains, the latter which also caused delay in fault clearance response time;
- Telkom's inability to meet customer needs for service installation and/or lines transfer within a specific time; and
- Telkom's new pricing methods on ADSL.

The Authority also experienced complaints against Mobile Operators regarding their terms of contracts.

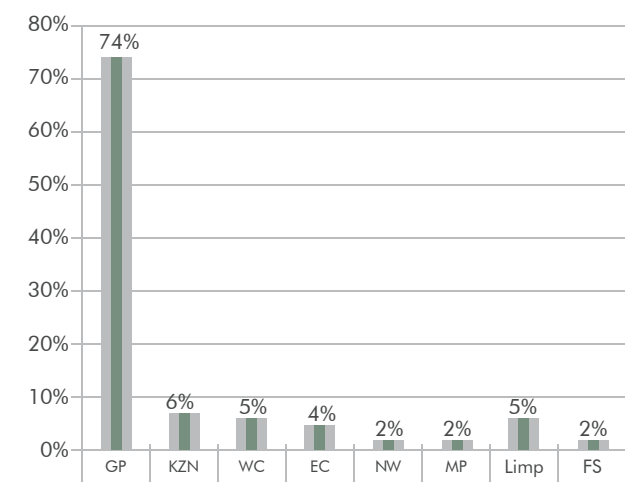
**Distribution of complaints across different operators:**

Telkom	Vodacom	MTN	Cell C	All Operators	Others
422	79	50	64	30	63
59%	11%	7%	10%	4%	9%



**Distribution of complaints across provinces:**

GP	KZN	WC	EC	NW	MP	Limp	FS
524	39	37	28	18	16	29	17
74%	6%	5%	4%	2%	2%	5%	2%





**Distribution of complaints across the MAIN complaints categories:**

Complaint Category	No. of Complaints
1. Telkom's Fault Reports	88
2. Telkom's Service Installation & Line Transfer complaints	64
3. ADSL Pricing	218
4. Misleading Marketing/Advertising Practices (Telkom's Home DSL)	18
5. Contractual Terms (Mobiles)	48

## Communications

The Communications Department provides marketing and branding support functions to ICASA, both internally and externally. The department is responsible for stakeholder relations and management.



*Councillors bidding farewell to ex-Chairperson Langa*

During the year under review, the department was involved in the following activities:

### Media Liaison

Media Liaison entailed providing the mainstream and regional media houses with information regarding ICASA's regulatory activities. Key activities included:

- Arranging media interviews for Councillors, Committee Chairpersons and Project Managers;
- Media briefings on contentious regulatory activities such as the Rate Regime determinations for Telkom and the issuing of the SNO licence;
- Media breakfasts such as on the issuing of the SABC's new broadcasting licences for public and commercial services;
- Press releases and responses to media coverage and enquiries;

- Placement of advertorials in industry publications; and
- Placement of advertisements about public hearings, the 2004 General Elections and the 2006 Local Government Elections.

### Industry Exhibitions and Events

The Communications Department represented ICASA in industry exhibitions and events and distributed promotional material at the following events:

- Minister's Budget Speech;
- Science, Engineering and Technology Week;
- FUTUREX;
- World Telecoms Day;
- Media Tech;
- SatCom Africa;
- World Summit on the Information Society;
- Sangonet; and
- The DoC Colloquium.

### Stakeholder Relations



*Stakeholder's meeting*

The department hosts stakeholder meetings and functions and maintains a database of telecommunications and broadcasting industry players. Stakeholders are regularly kept abreast of ICASA's activities through invitations to public hearings, press conferences and other events. Highlights of the year include the following:

- The Farewell Function for outgoing Chairperson, Mandla Langa, which also served as a stakeholder meeting for 2005 in which the industry was briefed about the ICASA's projects for the year;
- Presentations about ICASA's activities to international delegations visiting South Africa on fact-finding missions regarding the regulation of telecommunications and broadcasting;
- Receipt of and re-routing of enquiries from licensees and the public regarding ICASA's activities via the telephone or the ICASA website;
- Commissioning the re-design of the ICASA website, and updating content regularly in line with the ICASA's regulatory activities;

- Branding ICASA's public hearings and distributing promotional material at all outside venues across the country; and
- Co-ordinating the photographing and filming of ICASA's regulatory activities for the purposes of developing a gallery, organisational publications and for archives.

#### Internal Communications and Events



Take a Girl Child to Work Day

The Communications department is responsible for all internal communications and events that contribute to employee wellness and morale through the distribution of corporate gifts, the hosting of functions and events as well as the publication of an internal newsletter. The following events were hosted for the year under review:

- Family Day to facilitate interaction between staff and their colleagues' families, for both the head and regional offices;
- "Take a Girl Child to Work" programme;
- Outgoing Chairperson, Mandla Langa's farewell function for staff members;
- Women's Day celebrations;
- 16 Days of Activism Against Women and Child Abuse;
- World AIDS Day; and
- Year-end function for staff.

Apart from hosting internal events, internal communication activities also included:

- Publishing and distributing an internal Newsletter, [Izindaba@ICASA](mailto:Izindaba@ICASA) to staff on a quarterly basis;
- Managing subscriptions to newspapers and industry publications for ICASA's Council and management to keep abreast of industry developments both locally and internationally;
- Branding ICASA reception areas and boardrooms, both at head and regional offices; and
- Facilitating interaction between staff and Council and management through the use of suggestion boxes and staff meetings.

#### International Relations



Zambian Delegation Visit

The core activity of the International Relations department is co-ordination of participation and representation of ICASA at industry related regional and international events, hosting study visits from other regulators and the arrangement of all logistical support.

ICASA plays a key role in African and Southern African regulatory activities. It holds strategic positions in both African Communications Regulatory Authorities Network (ACRAN/RIARC) and Telecommunications Regulatory Association of Southern Africa (TRASA) as Board Members as well as holding positions in Working Committees. During the year under review, Committees worked on changing the constitution of TRASA to align it with the converged environment of the communications industry. As TRASA recognises the importance of acknowledging that dealing with telecommunications issues solely will put it in a precarious position as most of the regulators in the region regulate both broadcasting and telecommunications, it was necessary also to redraft its strategies to accommodate these changes. ICASA is tasked, with four other regulators, to redraft the strategic plan and work on a new vision and mission of the new organisation.

ICASA as a regulator of both Broadcasting and Telecommunications, is also a member of other international organisations such as RIARC, which is a continental organisation, IIC, SABA, CTO and others.

Under the leadership of the DoC, this unit also participates at the ITU meetings. ICASA participated in all the preparatory meetings that preceded the Second Phase of the World Summit on Information Society (WSIS), and the summit itself, which produced the following documents adopted by Heads of State in Tunis:

- Geneva Declaration of Principles;
- Geneva Plan of Action;
- Tunis Agenda for the Information Society; and
- Tunis Commitment.

Under its bilateral relations programme, ICASA hosts study tours from its sister organisations offering technical support to countries which are beginning to form regulators or with technical support in subjects like monitoring and other spectrum related issues.

During the year under review, ICASA participated in the following international/regional activities:

- **TRASA**

- TRASA/Catia Training Workshop;
- TRASA Executive Committee and Nettel@africa Governance Body;
- TRASA and Nettel@Africa;
- Spectrum Management Workshop;
- Policymakers' workshop: co-hosted by the DoC and ICASA;
- TRASA Executive meeting; and
- 9th TRASA AGM.



*Chairperson Mashile as a panelist at SatCom Africa 2006*

- **International Telecommunications Union (ITU)**

- 6th Forum on Telecommunication Regulation in Africa;
- Regional information meeting in 2006 (RRC-06);
- Regional Preparatory Meeting for the World Telecommunications Development Conference Regional (WTDC);
- Training course for Regulators prepared by the ITU for the Executive level on "Effective Regulation in a Broadband world";
- 6th annual Global Symposium for Regulators (GSR);
- Planning working Group for RRC-06;
- Internet Governance Forum;
- Working Party of Intersessional Planning Group;
- Workshop on interconnection access and price regulation; and
- World Telecommunication Development Conference 2006 (WTDC-06).

- **World Summit on Information Society (WSIS)**

- Second phase of WSIS
- 3rd Prepcom - WSIS

- **Broadcasting related meetings and events**

- 3rd AMARC Africa Pan African Conference;
- IIC 36th AGM and regulators forum;
- SABA, Arusha ; and
- SABA/MISA meeting: Broadcasting and ICT Regulation.

- **RIARC**

- RIARC/ACRAN Conference.

- **Other Meetings**

- Utility regulation and strategic training Programme;
- Wireless Local Area Network (Wlan) Technology Workshop;
- East and Southern Africa Regional Branch of International Council on Archives (ESARBICA) General Conference;
- Equality and Empowerment of Disadvantaged People;
- Third Annual Conference and General Assembly of the African Forum for Utility Regulators (AFUR);
- German Regulatory Authority (RegTP) Conference on flexibility in spectrum management;
- Research trip to Hong Kong;
- German research trip;
- Workshop on Developing and opening up of ICT infrastructure in West and Central Africa; and
- DRC: Covering elections through Community Radio.

- **Bilateral Meetings**

- Ethiopian Broadcasting Authority; and
- Federal Communications Commission.