



What's the purpose of the demand for a MACC probe?

KUALA LUMPUR, 13 October 2020 – We refer to two back-to-back articles by FMT “award winning” journalist, “Tussle over RM30million unpaid royalties for recording artistes” on 3 October 2020 and “Artistes seek MACC probe of ‘hidden hands’ in royalties fiasco” on 6 October 2020, which had primarily carried the views and comments of Datuk Freddie Fernandez, as President of Karyawan.

Unfortunately no attempt was made to confirm the facts stated or to obtain the views from all the parties mentioned. The integrity of both articles must therefore be questioned.

“It therefore leaves us no option but to correct the wrongful and unsubstantiated allegations made against Public Performance Malaysia Sdn Bhd (PPM)”, said PPM Chairman, Rosmin Hashim.

“At the outset, PPM’s parent body, the Recording Industry Association of Malaysia (RIM), had at all times supported the lobby for amendments to the Copyright Act in 2000 which brought into effect the rights of recording performers to be remunerated for the public performance of their recorded music. This resulted in the incorporation of PRISM Sdn Bhd, a separate licensing body to protect and license the rights and interests of recording performers”, Rosmin clarified.

“It must be corrected that PPM did not terminate its agency agreement with PRISM Sdn Bhd, which had in fact expired, but that both parties agreed not to renew the same” said Rosmin. Thereafter, PPM was appointed as agent of RPM, the newly incorporated licensing body for recording performers who had withdrawn from PRISM Sdn Bhd membership. PRISM Bhd was only incorporated the following year.

PPM’s role as agent of PRISM Sdn Bhd from 2004 to 2011, and thereafter of RPM from 2012 to 2016 was solely to issue licences and collect royalties for the performer licensing bodies. All royalties collected, after deduction of agreed expenses (which were at time discounted by PPM), were then remitted to the respective performers’ licensing bodies for their distribution.

PPM's agency agreement did not grant PPM any rights whatsoever to be involved in the management or operations (which includes distribution policies, processes and payment) of the performer licensing bodies. PPM did advise both PRISM Sdn Bhd and RPM from time to time, but were not in any position to mandate that the advice was followed. Both PRISM Sdn Bhd and RPM were separate legal entities with their own Boards of Directors and membership. As stakeholders, it is the performer-members who have the right to enquire into the management and operations, including distribution, of their licensing bodies.

The Copyright Act 1987 (as amended in 2012) grants the Controller of Copyright the role and responsibility of assessing entities which want to act as licensing bodies, and declaring the same upon their compliance with the requirements under the said Copyright Act. It has always been PPM's position that it was erroneous on the part of the Controller of Copyright in 2013, to declare two performer organisations as licensing bodies without clear delineation of how they would function.

"It is also important to note", explained Rosmin, "that PPM's distribution policy is based on the market usage of our members' music, and we have encouraged the performer groups to use similar methodology. PPM's transparent and accountable policy, in following international best practices, requires that upon distribution of licence fees collected, members also receive a report of the music recordings publicly consumed for which royalties are being paid to them".

PPM has been distributing royalties collected to its eligible members annually without fail, and to ease the cashflow of members, also makes an interim (mid-year) distribution. As such, PPM is certain that there will not be any finding of corruption in the administration of its affairs. "Our doors and our books are open to the Malaysian Anti-Corruption Commission (MACC), should they wish to pay us a visit", said Rosmin confidently.

"Our audited financial statements, which have been submitted to the Malaysian Intellectual Property Office (MyIPO) annually since 2012, as well as filed or scrutinized by other government agencies evidence this. We were also fully audited by MyIPO in December 2015", he continued.

It is therefore grossly misleading and mischievous to suggest that PPM had anything to do with the inability or failure of the performer bodies to resolve their issues and distribute royalties earned to their respective members. This is purely an issue among the performer bodies and their member-performers.

The position taken by Karyawan and Freddie that PPM must share its royalties with performers is also misconstrued, misleading and without basis. Numerous countries in the world do not even grant performers the right to collect royalties, much less put them on par with the recording companies who invest approximately 38% of their revenue earned into developing artistes and the music industry.

Rosmin also explained, "With regards MRM, it must be clarified that MRM holds significantly less than RM20million of performers' royalties, and that the Government agencies, namely MyIPO and the Insolvency Department (the latter

representing the interests of the wound-up PRISM Bhd), have been working very hard to ascertain each performer's right and share of the royalties collected".

"We have seen first-hand their concern and diligence in ensuring that all eligible recording performers, from the well-known singers to the least-known backing artistes and sessionists receive the royalties due to them", said Rosmin.

Much of the problem is due to the inadequacy of a performers' database because the performers had not provided the necessary documentation for distribution. "It would be more helpful if all efforts are directed towards collaborating with MyIPO and the Insolvency Department in distributing the royalties to the recording performers", suggested Rosmin.

The role of MRM was similar to that of PPM in the past, as agent of the licensing bodies, to issue licences and collect royalties. It was not the role of MRM or any of the other licensing bodies to interfere in the management and operations of another licensing body such as the performer bodies. It is important to remember that the rights administered by each licensing body are the private property rights of their respective members, for which a mandate is granted solely to the licensing body representing them. Apart from ensuring good governance, as required of any other registered company, no one including the government should interfere in the administration of private rights.

It is troubling that when the nation is undergoing unprecedented hardship, and when everyone, not only performers, but employees and businesses are suffering as a result of Covid-19, that instead of encouraging and supporting the Malaysian music industry there are those who would rather spend time disparaging it. "We should all be focusing our efforts on maximizing collections for this year and next, because not just PPM members, but the performers too will suffer if this economic hardship continues", said Rosmin.

We wish to point out that Freddie Fernandez sat as a Council Member of the Recording Industry Association of Malaysia (RIM) from 2008 to 2010. RIM had oversight over the operations of its subsidiary, Public Performance Malaysia Sdn Bhd, which acted as agent of the now defunct PRISM Sdn Bhd and Freddie Fernandez was notably silent on matters relating to performers and their rights at that time.

We also wish to highlight that RIM has always supported Karyawan on the number of occasions when Freddie Fernandez had solicited funds to help struggling recording artistes.

"The undistributed royalties pertain to performers and are under the care and control of the respective performer' licensing bodies. It is unnecessary and unproductive to drag PPM into it. PPM hopes that all affected parties are able to put aside vested interests and work together for the benefit of all involved in the music industry, who ultimately, are made up of individuals", Rosmin concluded.