

# Copyright and Royalty Among the Composers in Malaysia

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There is a lack of awareness when it comes to music copyright law in our society both internally and externally whether the musical owner or the listener who plays their musical composition. Composing a song is a general matter that and each composer has their rate and agreement between the production company or the producer. Apart from that, there are several third-party bodies including MACP, PPM, and RPM in coordinating the copyright and royalties of a musical composition. There is still a question mark of how an organization is run and how the collection is done each year and are these licensing bodies transparently carry out their duties of collecting and apportioning royalties accordingly. This also includes problems that occur unexpectedly including pirated music from the digital world today. In this research also, the author talks about the awareness of most listeners about pirated music, do they realize if they have taken or listened to pirated music, and are they aware of the act of music piracy. This research project intends to investigate the level of awareness regarding music copyright issues and regulations for musical composers and listeners in Malaysia. Secondly, to find out how the royalty is collected and distributed to their members according to the rate and set percentage. The core of the creative process of the legal framework has evolved around music composition.

**Keywords:** *Composers, copyright, royalty, music production, copyright act.*



## Introduction

Copyright is vitally important for anyone with any interest in music and the framework for every business in music in the industry is copyright. Copyright is the currency of the sectors in the music industry. This includes recording, what is in the recording, how and where they will be in the market. Who will get money from the performance, or is it will be used on a TV commercial? Can we use it in the background of a cinematic film, or we are able to copy the song for a friend? All these need to be copyrighted.

Generally, copyright is a bundle of rights with the exclusive rights in copying the work, make adaptations of the work (or prepare derivative works), perform the work in public, issue copies of the work to the public and broadcast or send a cable transmission of the work.

There are many things that could be done to improve system for copyright registration in Malaysia. Sections 26A, 26B, and 26C of the Copyright (Amendment) Act 2012 were added to the Act, and these provisions (along with the Copyright (Voluntary Notification) Regulations 2012) established a replacement framework for the voluntary notification of copyright into Malaysian copyright law (“Voluntary Notification”). As stated by Dmitry (2020), Music copyright designates legal ownership of a musical composition or sound recording and this ownership includes exclusive rights to redistribute and reproduce the work, as well as licensing rights that allow the owner of copyright holder to earn royalties. Music copyright is a legal right that grants the creator of an original work exclusive rights to determine whether and under what conditions, this original work may be used by others.

According to Dmitry (2020), The reason is that each piece of recorded music that has two sets of copyrights: one for the musical composition, and one for the actual sound recording. The music copyright is a bundle of separate exclusive rights. There are two types of rights in copyright which are master and composition.

## Music copyright awareness

There is lack of awareness about music copyright regulations for musical composer and listener in Malaysia that are breaking through the industry. Music copyright is something foreign or rather, ignored by some composers or songwriter. However, in the 1960s, an infringement of copyright and claims of Indonesian songs being plagiarized by Malaysian musicians occurred and became a political issue during the 1960s (Mohammed, 2016, 2021).

To apply copyright for music in Malaysia requires at least 5 songs (As stated in MACP official web page). According to Donovan & Ho (2019) “Sec. 13 of the Copyright Act 1987 affords protection to any work produced by an artist (including songs and music) by providing exclusive rights of control against reproduction, performance, distribution and commercial rental to the public.” The problem arises when the composer does not have a guideline to apply

copyright if they do not sign agreement with any record labels company. As stated in KASS.COM web page, there is no specific system of registration for copyright in Malaysia. It probably takes times to write 5 songs to register copyright. In the meantime, the song can be stolen easily even if there has no evidence that the song belongs to them. Other than that, fraud against composer copyright also can happen, if let say the composer sign agreement without having a knowledge about copyright at all, sometimes it is because they are too young. Next, the composer is unable to file an infringement lawsuit because if the copyright is not registered, they cannot file a copyright-infringement lawsuit. According to Farihad (2020)'s interview quoting Kimmy, "Composers, lyricists, musicians, and singers who are dissatisfied with the distribution of royalties must come forward. If there is any doubt or matter arising that demands an explanation from the party involved, do not be afraid to ask." Kimmy reminds artists to know their rights by gaining knowledge and speaking up if there is something unsatisfactory. Therefore, this study is conducted to find out whether the composers aware of music copyright alongside in finding how royalty being collected and distributed. Also, finding out how to register copyright correctly in Malaysia.

### **A 'Bundle of rights'**

In Malaysia, copyright subsists by virtue of Copyright Act 1987 ("Act") and copyright protection is accorded without any requirement of deposit or registration, copyright subsist in a work if it is original, is reduced to material form, belongings to one of the categories of protected works, and compiles with the qualifications of copyright and it may subsist in a work by reference to the status of the author, the publication of the work and the making of work. (Malaysia:Copyright Law and Regulations, 2020).

Pursuant to section 27AA(1) of the Act, "licensing scheme" which means that licensing schemes operated by licensing bodies in relation to any work that has been copyrighted including:

- Reproducing the work.
- Showing, performing or playing the work in public.
- Communicating about the work to the public.
- Rebroadcasting any of the work.
- The commercial rental of the work to the public.
- Taking adaptations of the work.

(Malaysia:Copyright Law and Regulations,2020)



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According to the Act, copyright owners have the rights (in Malaysia) to control:

- The reputation in any material form which is the communication to the public.
- The distributions and copies to the public by sale or other transfer of ownership.
- The commercial rental to the public.

The music copyright's a 'bundle of rights' subsists in the musical work and the sound of the recording. There are no differences in a 'bundle of rights' in Malaysia compared to United Kingdom. In UK, the owner of the copyright in a work has the exclusive rights such as:

- Copy to the work.
- Issue copies of the work to the public
- Rent and lend the work to the public
- Show, perform or play the work in the public any of the above in relation to adaption (Kenneth, 2016)

### **The Licensing Bodies**

Music Rights Malaysia Berhad ("MRM") was the sole body licensing body designated by the Ministry of Domestic Trade and Consumer Affairs ("MDTCA") to carry any of music licensing issues and the fees collection for all the activities in Malaysia on behalf of the music licensing bodies. Prior to July 27, 2020, MRM has been dissolved and the licensing powers have been returned and divide into three licensing bodies which include Music Authors' Copyright Protection, Public Performance Malaysia Sdn. Bhd and Recording Performers Malaysia Berhad.

Music Authors' Copyright Protection (MACP) Bhd. Is a non-profit organization to license the music that plays in radio and television stations, shops, entertainment outlets, mobile service providers and online digital. When a songwriters and publishers works are broadcast or publicly performed, they will be paid through MACP. As MACP was incorporated as a public company limited by guarantee in September 1989, authors membership over 2500, It controls and owns more than 50,000 pieces of local musical compositions for composers and publishers of the music. MACP also represents over 2 million international composers, lyricists, and publishers, and manages over 12 million pieces of musical compositions from all over the globe through reciprocal agreements with other foreign performance rights societies. As a result, MACP is authorized to provide blanket licenses to users in the nation, allowing them to perform any item repertory from the world's inventory of works managed by MACP.

According to Kenneth (2020), in The Star reported that local musicians who is performing covers in online platform will not been hunt, chased down, and forced to pay copyright fees because people are suffering in this pandemic especially individuals. Kenneth (2020) in his interview with Justin Johari (MACP General Manager) also mentioned that the company do not have time and enough resources to chase every individual that perform online. However, Justin mentioned that only companies that generates money from that performance will be charged for copyrights.

PPM Copyright Licence allows you to legally use Music Recordings in public and/or for commercial use. PPM allows owner of the music to legally use Music Recording in public and commercial use. It collects royalties for the use of recordings of music through agreements with other collective management organizations. All music video, karaoke recordings, which existing now or coming into existence in future, the copyright of which is owned and controlled only by PPM members to collect royalties through agreements for the use of recordings with other collective management organisations around the globe. Copyright exists as soon as the original work is created and automatically belongs to the creator of the work. (Public Performance Malaysia, 2020). PPM also represents all eligible Malaysian recording companies and international recording companies that has licensed PPM members to control their rights in Malaysia, issues licences for the use of copyrighted works if the forms of sound, music video, and karaoke recordings. (Jessie, 2021)

According to H. (2020) in The Sun Daily mentioned that The Malaysian Intellectual Property Corporation (MyIPO) stated that Public Performance Malaysia (PPM) participation in the distribution of royalties to performers is as licensing body representative. As a director of MyIPO, this agency will always monitor, concerned and give full cooperation to resolve any issues regarding collection and distribution of royalties. However, MyIPO does not intervene directly because it involves the 'private rights' of members of the licensing body, the problem of royalties' collection and distribution must be handled by the licensing bodies themselves and their respective members.

Recording Performers Malaysia Berhad (RPM), a non-profit organization company limited by guarantee duly incorporated under the Companies Act, 1965, is a legitimate organization recognized by the Malaysian government [specifically, the Intellectual Property Corporation of Malaysia (MyIPO)] in Malaysia that represents recording artists and musicians. RPM is open in its efforts to represent the interests of a large group of individual stakeholders, namely local and national recording performers, with a democratic stakeholder election process in line with international best practice.

According to Yanie (2012) in Harian Metro, RPM was established to distribute royalties to singers as well as recording musicians. royalty payments are not based on the number of songs in the album, instead only songs played on the radio including some places that play them are eligible to receive royalties.

## Digital Music Distribution

Digital music is a method of representing sounds as numerical values which exists in a form of file such as MP3 and CD that called as physical digital media. it is difference from this era which digital audio files such as AAC, WMA, OGG was formats are readily available for playback in numerous programs like VLC media player which supported a free file converter program that can converts one digital music file format to another (Mark Harris, 2020).

The music industry's fast change is a textbook illustration of how an invention may disrupt an entire sector and render current industry capabilities outdated. The capacity to control physical distribution was fundamental to the power and influence of the pre-Internet music business. Physical music distribution is becoming more obsolete as a result of the Internet, and the incumbent big music firms have had to reinvent themselves in order to survive (Tajuddin et al., 2021). This chapter will investigate the Internet's influence on the music business and describe the condition of the music industry in the age of digital distribution (Patrik, 2014).

The goal of digital distribution is to get your music on digital platforms such as Google Play, iTunes, Spotify, digital music stores and other streaming platforms. Distribution is an important aspect of music promotion. Previously, the only way for record labels and independent artists to get their records into the hands of listeners was through Brick-and-Mortar music distributors. Digital recording is like a record shop where people can download and buy the music, in exchange the artist will get royalties depending on how and where the music was listened to (Todd, 2019), But this digital music distribution Unrecognized in Malaysia's Copyright protection.

## Three Major Music Copyright Companies

Music copyright industries also known as record label consist of various types of enterprises and organizations. There is multi-type of large and small independent record label firm globally and locally in Malaysia. There are also global major music companies which are called as 'Big 3' record label companies such as Sony Music, Warner Music, and Universal Music Group which are commonly used in popular media and academics. Before 'Big-3' become a phenomenal there was a 'Big-4' in the industry which EMI Group has been purchased by Universal Music in 2012 for \$1.9 billion. According to Heather (2019), Universal Music now gained more access to the work of major artists from EMI Group such as Pink Floyd, Kanye West, the Beatles and Lady Gaga and it makes a huge change in the music business landscape because they are controlling the vast majority. Other impact is some artists moved to an independent label or opted out and be self-publish of their music.

The function of these companies is to produce, sell records, CDs, and recordings. Another term is that major record labels find singers and musician and get them to sign a contract to make a

lot of money for both parties (Hung, 2021) but if we read carefully to the agreement, in fact the record label will get a bigger profit than the artist itself. It is also proven by Liam (2020) in the article said, the purpose of signing a deal with a record label, meaning that the artist legally binding agreement which allows the label to exploit their sound recordings by producing physical copies of the artist's music, put them online through distributor, or sell digital versions of the product. The artists will get paid by the percent of royalties which has already deduct all the recording costs, releasing costs, publicity cost etc.

However, a singer or musician and a composer or songwriter have different paths in making their music. Some of them have talents to sing, compose songs, and write lyrics. An artist like them is encouraged to sign under any record label. But as a songwriter or composer who are reaching out to a record label it isn't the most effective ways to get noticed in the industry. There are other ways to be a famous composer or independent composer without signing in any specific record label. As suggested by Christine (2019) in Quora.com, which she's a Recording Artist Manager and Industry Consultant said that instead of reaching out to a label, songwriter and composer should start looking for a publisher who can represent their catalog and help them pitch their work to the appropriate artists to be paired up with.

### **Royalty Distribution in Malaysia**

Nowadays, most commercial public spaces played musical works such as in restaurant, shopping malls, theme park etc. When musical work used in public area especially those area that makes profit, it is essential that they are used legally by obtaining the proper license. Licensing is an essential permission to use a specific copyrighted musical work. Copyrighted music giving the owner a special right includes their right to control its reproduction, exhibition or playing in public, performance, rebroadcasting, commercial rental to public, and making adaptations of the work. When the musical work released to the public, it is difficult for the musical owner to monitor the unauthorized user of their works. Other than that, it is also to license a musical work to numerous third parties to collect royalties of the use of their works. Exploitation of their musical work can be detected and eradicated.

The Licensing Bodies only represent copyright holders and works of their members who has been registered under them. Members need to know how to differentiate between the existing Licensing bodies (Joel & Foo, 2020).

Previously, the licensing body responsible for coordinating the distribution of royalties to artists, musicians, composers, and songwriters was under the responsibility of MRM. But after MRM was dissolved, it was discovered that the misappropriation of unpaid royalties to its members amounting to about 20 to 30 million Ringgit Malaysia.



As stated earlier in the literature review, the royalty collection consists of several licensing bodies including Music Authors' Copyright Protection (MACP), Recording Performers Malaysia Berhad (RPM), and Public Performance Malaysia (PPM). These licensing bodies are entrusted to collect royalties for artists, composers, song writers, and musicians according to the licensing bodies. In this chapter, I would like to discuss the transparency of music licensing bodies in Malaysia. Before the existence of these 3 licensing bodies, there was 1 licensing body, namely Music Rights Malaysia Berhad (MRM), but it was dissolved in 2020.

The news of the dissolution of the MRM licensing body in 2020 was very shocking. Furthermore, after the dissolution of the licensing body, there was an internal problem that arise and shocked all Malaysians that MRM did not distribute royalties of RM30 million to members of copyright holders.

The nonprofit consortium, which was founded in 2017, is a collaboration of four major licensing CMOs (collective management organizations) with the goal of streamlining the music licensing process. There was news about alleged irregularities following the dissolution of Music Rights Malaysia Berhad (MRM). Under the previous MRM coordination, RM30 million in outstanding royalty payments to Malaysian musicians are expected to be received in December.



*Figure 1: NME news, a forced dissolution of MRM for unpaid royalties.*

Above is the news about overdue royalties become a main topic of the Malaysian news such as in NME, Harian Metro, Mstar, Utusan Malaysia, Berita Harian, Hot FM, and Gempak. According to Daniel (2020), because of the abrupt closure, nearly RM20 million in royalties supervised by MRM were not paid to the musicians. This includes an additional RM9 million in cash and receivables from Recording Performers Malaysia Berhad (RPM), one of the main organizations behind MRM.





Daniel also mentioned in the article, which following an official meeting on October 5, the Malaysian government's Insolvency Department (MDI), and the PRISM Actors Verification and Claims Committee (PPVCC) resolved the matter. Hence, Fernandez, a former musician, and entrepreneur who had previously urged the Malaysian Anti-Corruption Commission to investigate possible corruption in the organization, expressed his displeasure that "hidden hands" may have manipulated royalty grants for personal gain.

The distribution of royalties to musicians in Malaysia has long been a source of contention in the industry, with allegations of improper payments to artists dating back to 2001. As stated by Fiza, (2021) in Gempak article, Sheila Majid with RPM board members Jaclyn Victor, Anna Raffali, Alfa Booty, Razin Mestica, Aniu and Muhammad Razin. Sheila stated that she could not accept allegations that RPM cheated and took royalties money that should have been distributed. Sheila added that RPM did its best without taking payment just to fight for the rights and interests of members. Sheila also denied the allegations and stated that it was simply a delay in the distribution of royalties. If members are not satisfied, they need to go through the right process. But in fact, Sheila is indeed guilty of these issues.

In an interview, president of the Malaysian Employees Association (Karyawan), Datuk Freddie Fernandez urged the Chairman of Recording Performers Malaysia (RPM), Datuk Sheila Majid to resign following his failure to resolve the issue of artist royalties (Fieyna, Ridzuan, Ali, Anzar & Farihad, 2020). In addition, SPRM (Suruhan Jaya Pencegah Rasuah) raided four offices of the artist royalty management body to investigate on the issue of funds from the collection of song copyright royalties on November 26, 2020 (Fieyna, Ridzuan, Ali, Anzar & Farihad, 2020). In this chapter, we find out that there are still more abuses of power where the heads of licensing bodies are not transparent and have internal corruption.

## **Music Plagiarism**

Music plagiarism is the imitation of another author's music but claimed as theirs. There are two contexts when it comes to plagiarism in music. The first one is the musical idea, also known as melody or motif. The second one is music sampling, which the other author reusing a portion of one sound recording and applied it in their song. As stated by Matt (2019), sampling means using parts, portions of prior recordings, or bits into a new song, it can be plagiarism, but it is not always. Use of sampling without permission is a violation. However, sampling with permission is not considered as plagiarism.

Besides that, this is a bitter truth of the reality in the industry, and this is something often happens which the more popular the song is, the more likely other authors may be involved in copyright infringement if their song is found to have little resemblance to the actual song (Matt, 2019). This is because people often recognize the sample of the popular song, and

it is increasing the likelihood that you will be reported to the copyright holder that you stole it.

Therefore, plagiarism and copyright infringement are not the same thing, but they do overlap in some ways. Plagiarism does not always result in a copyright violation, but it is generally regarded as unethical behaviour (Iyar, 2014, p.6). This situation concerns the copyright owner's economic rights, whereas plagiarism concerns the creator's moral rights. Therefore, in general music plagiarism is something that is difficult to discuss.

### **Copyright in Digital World**

Social media has been one of the marketing platforms since time immemorial. But since early 2020, the focus of marketing in social media soared sharply with the situation of lockdown because of pandemic Covid-19 around the world (Laura, 2020), it is now the most strategic marketing platform. Although the focus of advertising has shifted to social media platform, but there are still many people who are not aware of the intellectual rights of a work.

According to Beatrice, Yin & Ee (2022, p.70), Malaysians have a low level of property rights awareness, with seven out of ten people having little or no knowledge of intellectual property rights. In this finding, there is an urgent need to educate Malaysians about intellectual property rights legislation and piracy, as well as the economic impact of piracy. Apart from users, the low level of awareness is also included by new creators. The seriousness of music piracy may result in a lot of losses in the industry including lost jobs, lost investments, lost output, and lost tax revenues (Beatrice, Yin & Ee, 2022). Therefore, piracy can harm the owners of the intellectual property, consumers and also taxpayers (IPI, 2007) and it can go beyond the impact on the production, and the distributors of the sound recordings. Malaysia's entertainment and media industry lost more than RM2.3 billion and RM330 million in tax revenue ("Why Malaysia, MCMC", 2019). The livelihoods of the music industry such as composers, singers, musicians, and recording studio will be much affected by this situation. The firm is unable to sustain their economic activities and it would be destroyed if it left unchecked.

### **Copyright and Social Media**

A social media platform such as Instagram, TikTok, Facebook, Twitter, and YouTube etc., allows you to do online posting of our own material which the copyright is kept by the owner, the social media site doesn't own the work that we posted on their site (Anuar et al., 2020). But by agreeing to post works on their site, we need to accept and sign all the agreement that gives the site a license to use the work for variety of purposes such as, adapting it, displaying it, or copying it. In this case, the license will be free from any payment (Jean, 2020) which means the owner of the site don't have to pay anything to the creator. According to

Jean (2020), to protect our content, we need to include copyright statement on the file that we're uploading. The property might get appropriated by someone who might be in or out of the social media site. As a content creator, we must be vigilant to keep track of potential violations and to file complaints as soon as possible because we may not be able to support the claims in a lawsuit if we are not vigilant. Overall, copyright issues are complicated with different situations for each creator. The concerned of copyright violations can be made by filing a takedown notice and get some help from an intellectual property attorney. Hence, to file a complaint in digital media will require us to use a process of DMCA takedown notice to send a counter-notice to the violators.

A take down notice process includes:

- Owner of the copyright content need to send a notice to the ISP's designated agent who hosts the infringing website. The designated agent acts as the ISP's agent for the purpose of sending and receiving legal notices (depends on each country).
- The information is filed with the United States Copyright Office by the ISP.
- The ISP removes the content in question and promptly notifies the offending party of the takedown and why it was done.
- The ISP also will notify the owner of the copyright that the content has been removed. (The process of sending and receiving DMCS takedown notices, 2020).

In Malaysia, a copyright owner or their agent may submit a takedown notice to Malaysia online network as agent for DMCA in accordance with the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(c). As an internet service provider, Malaysia online network are entitled to immunity from such infringement claims under the DMCA's "safe harbour" provisions. To file a good faith infringement claim, the owner must provide with notice and send through <https://malaysianonlinenetwork.com/contact-us/> with the following information:

- The physical or electronic signature of the copyright holder (or someone authorised to act on his or her behalf).
- Identification of the allegedly infringed copyrighted work.
- Identification of the infringing material to be removed, as well as reasonably sufficient information to allow the service provider to locate the material.
- Contact information for the complaining party, including your name, physical address, email address, phone number, and fax number.
- A statement that the complaining party has a good faith belief that the copyright agent's use of the material is unauthorised.
- A statement that the information in the notification is accurate, and that the complaining party is authorised to act on behalf of the copyright owner under penalty of perjury.



Title 17 USC 512(f) imposes civil damages, including costs and attorney fees, on anyone who knowingly and materially misrepresents certain information in a notification of infringement under 17 USC 512(c) (3). Thus, if someone uploads content on the internet, no matter what type of content, they can still file a complaint of copyright infringement to sue those who stole their copyrighted content. With the DMCA and agents under it, copyright is protected from widespread theft. This can also be associated with new composers, experienced composers, musical works, artists, or songwriters can upload their work on the website or social media, but they must accept all the conditions that the social media provides. So, they don't have to worry so much about their work being stolen because all they need is the proof that they are the owner of the content or work.

## **Conclusion**

Based on the data analysis and the findings, awareness is the most prominent issue from all angles, including the staff of the head of the licensing body, the problem between musicians, and the awareness about piracy, meaning from internal to external problems are still the main issue of the music industry in this country. Other than that, the more advanced a technology, the greater the amount of music piracy committed by society. For example, copyright will change from time to time according to the latest technological developments. a feature in the application that is launched, the more copyright deeds in the digital media. Hence, any composer who feels like using social media as a platform to start their work is highly encouraged as the probability of their work being stolen can be taken to court because of the existence of the Digital Millennium Copyright Act (DMCA) which constantly enacts or renew their act from time to time according to technological developments. In Malaysia, there are agents or the third parties to manage between our work and also DMCS to send a takedown notice to other parties who steal our content to delete it from their page. However, due to lack of awareness and the authority of the copyright act, the losing end still comes back to the composer and the artist behind the scene.

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