



# KENYA COPYRIGHT BOARD



## PRESS STATEMENT

February 21, 2024

### STATEMENT ON PERFORMANCE OF THE LICENSED CMOs; PAYMENT OF ROYALTIES THROUGH ECITIZEN AND PROSPECT OF A GOK COLLECTIVE MANAGEMENT ORGANISATION

Let me take this opportunity to welcome members of the fourth estate to the press briefing on matters touching on the creative sector that have attracted public interest recently.

I wish to first address the issue of performance of the licensed Music Collective Management Societies in 2023.

The Chief Executive Officers (CEOs) and Chairmen of the three licensed CMOs namely the Music Copyright Society of Kenya (MCSK), Kenya Association of Music Producers (KAMP) and Performers Rights Society of Kenya (PRISK) were invited to meet the KECOBO Board of Directors to account for monies collected in 2023. All the CMOs were represented by CEOs and Chairmen except MCSK which sent a director and a legal officer.

From the Information presented by the three CMOs themselves, KECOBO established that the sum of **Kshs.249,687,212.80** was collected jointly from January to December 2023.

However, there was a disparity in amounts declared by MCSK and those declared by KAMP and PRISK for 2023 joint collection. While KAMP and PRISK declared a collection of Ksh.249 million and they accounted for **Kshs.61 million** and **Kshs.52.7 million**, respectively, MCSK on its part declared receipts of Kshs.109 million representing a shortfall of **Kshs.26 million**. Cumulatively, MCSK declared total revenues of **Kshs.139,295,094 comprising of** Public Performance (109 million) and Mechanical income (thirty million).

The KECOBO Board of Directors noted that royalties were paid only from quarter one of 2023 collections. All the Societies did not set aside royalties from collections in quarter two, three and four despite improved business environment.

Based on the above figures, the royalty to income ratios was as follows:-

CMO	Total Annual income (Joint collection in millions)	Royalty paid or payable. Millions/Shillings	Percentage of royalty Collections	vs.	Expected royalty payment (70% income, in millions/kshs)
KAMP	57.1	6.2	10		39.9
PRISK	61	10	11		42.7
MCSK	139	9.6	5		97.3

As per the Copyright (CMO) Regulations, the CMOs ought to have distributed at least Kshs.173 million or 70% of that collection. This is clearly not the case here.

A simple analysis of the amounts that would accrue to MCSK members were this revenue paid as the Copyright Regulations reveal that each artist could earn at least six times amount paid during the year in royalties as illustrated below:-

	Artist name	Payment received (Kshs)	Payments if 70% rule observed
1.	Rehema Lugose	757,092	4,540,000
2.	Reuben Kigame	122,410	734,460
3.	Otile Brown	120,000	720,000
4.	Marakwet Daughter (Millicent Jepkorir)	108,123	640,920
5.	Stephen Kasolo	106,862	641,172
6.	Joseph Ngala	101,032	606,192
7.	Praise Makena	110,000	660,000
8.	Simon Macharia (Musaimo)	98,000	588,000
9.	Jackson Wambua	91,000	546,000
10.	John De Matthew (Deceased)	70,094	420,000
11.	Solomon Mkubwa	74,138	444,000
12.	Joel Kimeto	108,000	648,000
13.	Sweetstar (Aron Rotich)	62,000	372,000
14.	Steve K	100,000	600,000
15.	Kendagor	72,000	432,000
16.	Mum Cherop	70,000	420,000
17.	Kibet Mutai aka Kipsang	115,000	690,000
18.	Zipora Erik	100,000	600,000
19.	Justus Myello	100,000	600,000
20.	Kasembeli Watila	10,000	60,000
21.	David Sakari	10,000	60,000

\*All this *information has been received from artists from various regions in the country*. Note that this royalty amount does not include royalties for mechanicals of which no beneficiary list was presented.

From our analysis, we note that artists from some regions like the coast, Nyanza and Central were underrepresented or left out completely. We shall demand explanations in this regard. The last column demonstrates that royalties can change the life of an artist if managed in an efficient, open, and transparent manner. Especially if costs are brought down significantly. The level of underperformance and high operating costs is observed with the other two other CMOs as well.

In terms of revenue sources, the income from broadcasting stations, PSV and new media revenue is grossly poor. The CMOs have made various proposals to improve this performance which KECOBO shall be acting on in due course.

The Music Copyright Society of Kenya (MCSK) presented its information in a letter format and a list of members who received royalties in 2023. On review, the Board of Directors found information presented was scanty and at variance with details on joint collection. The details and amounts received for mechanicals in 2023 including monies received from foreign entities like PRS London, CAPPASSO and Google Ireland totaling Kshs.30 million were also not accounted for.

The Society explained that the lack of Police enforcement, high legal fees and KRA tax arrears are principal reasons for the small royalty payments.

The Board therefore directed that the Society presents the following additional information:

- i. Full income from mechanical rights exploitation.
- ii. Explain disparity of amount received from other CMOs.
- iii. Submit list of legal fees for 2023.
- iv. Submit a monthly breakdown of incomes received from different sources in 2023.
- v. Submit a snapshot of payroll costs for three years.
- vi. Submit a list of Board meetings and three-year cost comparison.
- vii. Submit the 2023 Budget with three-year comparison.
- viii. Amounts claimed from KAMP and PRISK.
- ix. Details of payroll costs for three years.
- x. Provide documentary evidence of amounts set aside for final royalties for 2023.

The Society did not submit the above information despite being requested in writing.

The Performers Rights Society of Kenya PRISK accounted for the sum of Kshs.60 million with a royalty distribution of Kshs. 7 million with the sum of Kshs. 3 million pending distribution.

After discussion, the Society was directed to submit the following additional documents:-

1. A list of all Board meetings and three-year cost comparison;
2. Budget with three-year comparison;
3. Copies of all lease agreements that PRISK is interested in; and
4. Provide documentary evidence of amounts set aside for final royalties for 2023.

The additional information was submitted as requested including the amount pending payment as indicated above.

The Kenya Association of Music Producers (KAMP) accounted for **Kshs.53 million**. Of that amount **Kshs.5 million** was distributed and a sum of **Kshs.1.9 million** royalty is pending distribution. The Society provided a bank statement for the royalty pending payment.

The Society blamed the CMO Tripartite Structure for high operating costs as operation staff salaries were set under that structure.

KAMP was asked to present the following additional information:-

1. Amounts that KAMP collected from its parallel collections and explain whether this amount has been accounted to other CMOs.
2. Submit details of payroll costs for three years
3. A list of all Board meetings and three-year cost comparison
4. Budget with three-year comparison.

This information was submitted as required.

On receipt of those documents, the management analyzed the reports and established the following:-

- a. The expenditure on collection is unsustainably high with only 10.5% of collections being paid as royalties thereby not meeting Copyright law standards.
- b. PSV, Broadcast, and new media royalties are quite low.
- c. The Music Copyright Society of Kenya (MCSK) could not account for the sum of Kshs.56 (Fifty-Six) million. This amount comprises Kshs.26 million received from joint collection and Kshs.30 million from other CMOs abroad and Google Ireland.

In view of the above, I directed that the matter be handed over to the Ethics and Anti-Corruption Commission (EACC) and Director of Criminal Investigations (DCI) for investigations. The letters to those two institutions the CEO have been prepared and dispatched.

My office shall be following up the progress at both DCI and EACC next week.

With regard to poor collections from broadcasting sector, KECOBO in conjunction with the Communication Authority shall be convening a meeting with broadcast companies to resolve any issues in that sector.

KECOBO has requested an urgent meeting with the Inspector General of Police and the Ministry of Interior and National Administration to establish a working framework to enable restoration of enforcement for CMOs.

Finally, KECOBO management have been tasked to consider the prospect of a GOK led CMO for all rights (Music, publishing, visual art, and film) through the repeal and replacement of the Copyright Act through the draft Copyright and Related rights Bill, 2023 which is awaiting Cabinet approval. Let me emphasize that the views and best interest of all stakeholders will be considered in that regard. Even then the era of multiple entities is over.

Meanwhile, to improve performance, cut costs, and promote transparency in the interim, the KECOBO management is in the process of preparing the document necessary on transition to eCitizen payment platform.

During the same period, KECOBO has also received information that the Music Copyright Society of Kenya (MCSK) held a Special General Meeting on 16<sup>th</sup> February 2024 with stated purpose to amend its memorandum and Articles of Association.

Matters of CMO meetings, qualification and tenure of Directors are governed by the Copyright Act and the Copyright (Collective Management Organization) Regulations. Under the law, KECOBO ought to have been formally notified of the meetings and Members of the Board of Directors must retire after serving two, three-year terms.

KECOBO will not be party to any amendment whose effect is to allow members who have served their full two three-year terms to be eligible for re-election or to stay on, as that would be inconsistent with the law and represents an attempt to circumvent the right of members to choose new Directors. Should this unwarranted change be confirmed, suitable penalties will be imposed on the Music Copyright Society of Kenya.

**Issued by:**

**HON. JOSHUA KUTUNY  
CHAIRMAN  
KENYA COPYRIGHT BOARD**

