

The Media Association Jamaica Limited (MAJ) notes the several comments and proposals of the Broadcasting Commission of Jamaica on the practice known as PAYOLA and wishes to make our position known.

For several reasons, which will become clearer later in this paper, the MAJ and its members DO NOT support nor do we endorse the practice of PAYOLA. Our members are of the view that the practice is, first and foremost corrupt, and IS ALREADY CONFIRMED as illegal by the Corruption Prevention Act 2000.

• **PAYOLA IS AN OFFENCE UNDER THE CORRUPTION PREVENTION ACT**

Section 10 (a) states:

(10) An agent commits an act of corruption if he-

(a) corruptly accepts or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or for forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour to any person in relation to his principal's affairs or business; or.....

and Section 11 (a) states

(11) A person commits an act of corruption if he-

(a) corruptly gives, or agrees to give or offers, any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

With respect to fines, the law is already clear on what those are and they are substantial.

15. Offences.

15. (1) Any person who commits an act of corruption commits an offence and is liable-

(a) on summary conviction in a Resident Magistrate's Court-

(i) in the case of a first offence to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and

(ii) in the case of a second or subsequent offence to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;

(b) on conviction in a Circuit Court-

(i) in the case of a first offence to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and

(ii) in the case of a second or subsequent offence to a fine not exceeding ten million dollars or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

The position of the MAJ therefore is that there is legal basis that already exists that criminalises the improper practice and what is required is enforcement of the law and not a new law which pejoratively positions media entities, owners and managers as the problem.

## • **PAYOLA IS A NEGATIVE IMPACT ON OUR BUSINESS**

We must emphasise that the practice of PAYOLA is against the best business interests of media, including the fact that where it occurs, it is money that is informally being generated through our operations but eluding the legitimate business activities of media entity. Our operations, facilities, airways are being exploited in the process for some individual gains and this is not supported or condoned by media owners or managers.

It should also be noted that if this illegal activity did not exist promoters, labels and artistes would probably revert to the purchasing of promotional airtime in media to push their interests. As long as PAYOLA flourishes, it reduces that business prospect for media owners and managers. The MAJ and its members could not therefore find a basis to support an activity that is diverting business from our operations.

## **PAYOLA IS AGAINST ESTABLISHED POLICIES AND EMPLOYMENT CONTRACTS**

We wish to state further that in our organisations the practice of PAYOLA (even if not defined by that word) is prohibited by both employment contracts and the policies and procedures of media entities. Media are therefore already tackling this problem. We accept that all additional efforts will make this task easier and more likely to succeed.

The MAJ wishes to advise that it is aware that at the individual media house level there have been instances in recent times where based on reasonable suspicion contracts have not been renewed, persons have been terminated and resignations have been requested – all moves against PAYOLA. The difficulty in being able to present hard evidence to support reasonable suspicion means media entities must manage how aggressively it proceeds when being able to provide clear and irrefutable proof is the key challenge.

In fact, there are examples of full programmes that have been discontinued on some stations due to complaints of the corrupt practice.

It cannot be overemphasized that while action is taken against PAYOLA, we acknowledge that it is very difficult to unearth, to police and to secure the evidence to prosecute against this practice. We must also make the point that for PAYOLA to occur there must be at least two corrupt parties involved.

Our members have time and again received complaints that the practice exists and that artistes have been marginalized by it, but when complainants are asked to co-operate or provide information to assist in identifying those involved, the cooperation, evidence and willingness to tackle the problems, disappear.

The MAJ and its members are willing to cooperate in the process of protecting our businesses from this corrupt act. We have heard of schemes which call for people to go to insurance brokers to pay to re-insure beneficiaries' vehicles and the drop off cover notes at odd locations to a friend to pass on later the vehicle owner's uncle, aunt or sibling. We have heard of cash payments being made for rent, payments being made to specific accounts for power supply to a light and power company office, hotel bills being paid and so on.

As much as this seems a fascinating matter to probe, media houses do not have the capacity, the investigative skills and more importantly we do not have the legal basis to probe into individuals' private business transactions nor do we have the financial resources to investigate these matters so diverse and so wide.

#### **• CONFLICT OF INTEREST EXISTS AMONG DJ WHO ARE ALSO MUSIC RHYTHM MAKERS**

Our industry in more recent years must take responsibility for the development of a practice where some DJs also electronically produce music which they permit artists to use and which they also play.

The conflict of interest is immediately evident.

A DJ who develops a rhythm on which several songs are done and those songs are then played by that DJ (and where sales take place benefits accrue to the DJ) is leaving the door open for the DJ to benefit if he pushes those songs while he is on air.

Some media have taken steps that require such DJs to declare such interests and further that bar the DJs from playing songs that are done on rhythms produced by them. This is an

example of self-regulation at work but it is recognised that this is still not a perfect solution.

## • **THE OVERESTIMATION THAT MEDIA “MAKES THE HITS”**

There is a circular conversation that has been had about whether or not it is media that make hits out of some music, while ignoring other content which is of “good quality”; with others arguing that hits in the dancehall on social media, having gone viral or being downloaded becomes known to DJs who then bring them on air. Indeed, we have experienced a vast amount of material that has been popularized in the dancehall being brought into broadcast media and leading to strong regulatory action to stop that.

Our view is that with the proliferation of media sources, and with consumers having so many different sources for their music content, the case made that people paying to secure play of their music is hugely overrated and over-estimated in the context of making it a HIT. Of course rotation on broadcast media brings tremendous attention to it, but our experience is that more hits are being made outside broadcast media and radio and television are having less and less of an influence in this area.

Over-regulating media in a quest to effectively deal with PAYOLA may yet only have the impact of reducing the competitive ability of broadcasters while new and alternative media sources run wild with anything and everything.

## • **PARTNERSHIP APPROACH REQUIRED**

It is our view that for the practice to be successfully tackled, more cooperation between the entertainment and media industries, alongside law enforcers and regulators is required. Unless an equitable approach to tackling both (demand and supply) sides of the problem is taken by policy makers and regulators, the system will continue to flourish. Media houses being intentionally or unintentionally positioned as willing facilitators of the practice to be isolated as the purveyors of this scourge, is no encouragement for consensus building and partnering.

## • **PAYOLA IS MORE THAN PAY-FOR-PLAY OF MUSIC**

The MAJ wishes to make it known that our views on PAYOLA also extend to the areas of: Videographers being paid by business clients to capture their brands and products in material supplied to media for use as editorial content, where there is benefit to the videographer or others, at the expense of the media business. Again while persons will complain about this action, when they claim not to get what they pay for, they have been unwilling to cooperate or collaborate in uncovering it;

Public officials or political operatives have been accused, by each other and by some in the profession of providing “encouragement” or “rewards” to unscrupulous members of the media profession to report on them or their activities in editorial content. This breaches policies at several levels, including PAYOLA and has been tackled with some success from time to time, but it is our fear that some of it is undetected;

Some Public Relations, Publicity and Promotions practitioners who pay for artists or competing entrepreneurs, their events and activities to be highlighted or their principals and to be interviewed is a problem being fought. Some apparently have paid for their music to be played or seek other favours, again outside the rules, policies and practices of our business organisations. Some of this includes freelance entertainment writers who also manage and promote artistes and the events on which many artistes perform;

Unauthorised provision of gifts to media workers, sometimes with explicit or implicit “expectations” to get something (including favourable media exposure) in return, also creates PAYOLA challenges, even if by how it appears to those who look on. Our view is that a comprehensive approach to addressing PAYOLA should be through a wider than just the pay for play corrupt act and the Corruption Prevention Act provides that broader than PAYOLA focus on fines and imprisonment for media practitioners.

## • **LIBRARIES AND MUSIC CHARTS**

With respect proposals to tackle the issue in media entities through having functioning libraries – we view this as overstated. The points made about employment of Programme Managers we this is also being mis-stated. With respect to music libraries, the MAJ wishes to state that music libraries have become very dynamic and have changed tremendously over the years. The same imperatives of change and dynamism spoken of when other regulatory and industry

change cases are being made, also apply to this area. Records, CDs or other hard storage device libraries are going extinct. All areas of media (including the traditional broadcasters represented by the MAJ) have to change in relation to these developments. The supply of content in “soft” form over different media has made the issue of how libraries are used almost an almost irrelevant discussion.

Accounting for what is played is where some attention is to be placed although this must not be pre-determined or regulated as freedom to play based on policy, target audiences, mixture of genres, focus on party goers and so on are all to remain the jurisdiction of programmers and station management and not to be imposed indirectly.

This raises the issue of the issue of management responsibility for programming. It must also be borne in mind that the management position called Programmes Manager or Programmes Director has evolved into Station Managers, Executive Producers; Programme Coordinators among other titles and so if the older Programmes Manager name/title is not used, it does not mean there is no responsible officer in our organisations. It is the functions of monitoring, management and policy implementation that is to be assessed.

On the matter of Music Charts we in the MAJ state that the transformation of media and the ubiquitous nature of content, along with the democratization of media across the world and across the media and music industries have made music charts formats, voting approaches, picking by “experts” all acceptable approaches to presenting charts. It is the credibility of these charts that will cause them to survive or not. We do not support an industry prescribed chart format or a boxing of media houses into a particular approach. The MAJ has no difficulty with the various chart compilation approaches being made known to the public. Thereafter they must live or die on the basis of their credibility.

## • **OVERALL APPROACH**

The MAJ is a group of diverse and competing members. We support the independence of each entity to manage its affairs within a framework that does not marginalize traditional media at the expense of making space for new media – the approach must be to seek an equitable way for the survival of new and traditional media.

The Association does not support over regulation but notes that self-regulation must recognise the diversity of the entities legitimate/legal interests and approaches.