



MINISTRY OF DOMESTIC TRADE AND CONSUMERS
AFFAIRS



INTELLECTUAL PROPERTY CORPORATION OF MALAYSIA
(MyIPO)



Session 5 “State of Play of Collective Management in Malaysia 18 September 2019



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1. Malaysia Legislative Framework

- Operational Framework – Collective Management with legislative support
- Rules for operation – Section 27A and Copyright Regulations (Licensing bodies) 2012 – based on certification/accreditation/registration/declaration system
- Minimal government supervision with a power to revoke licensing bodies
- Membership of International Treaties – Berne, WCT and WPPT
- Based on the UKCDPA Act 1988

3. Malaysia Collective Management Licensing System Under Section 27A Of The Act

1

Application by society/organization to operate as CMO for copyright owners/ representing specified class

Application through Copyright (Licensing Bodies) Regulations 2012

2

Determination by Copyright Controller

To determine which class the applicant represented for/The list of members/mandate/ Applicant Constituent Documents

3

Written declaration issued by Copyright Controller to applicant as declared CMO in pursuance to section 27A(1) of the ac

To determine which class the applicant represented for/The list of members/mandate

5

Adherence by CMO to submit loss profit account, balance sheet and auditor's report to Copyright Controller

Copyright Controller is empowered by law to compound CMO if the CMO failed to submit this documents

5

Revocation by Copyright Controller if the conditions under section 27a(6) is satisfied

- Not functioning as CMO
- No longer has the authority to act on behalf for its members
- Not acting in its rules/best interest of its members
- Altered rules no longer complies with provision of the act
- Refused/failed without reasonable excuse to comply with the act
- dissolved

1. Brief History – Milestone Of CMO In Malaysia

**PRE-AMENDMENT COPYRIGHT ACT
1987
(AMENDMENT 2003)**

MACP

Establishment Of
MACP Public. Ltd in 1989
(Represent Authors)

PPM

LINKING MUSIC
WITH BUSINESS

Establishment Of
PPM Private Ltd. IN
1988
(Represent Sound
Recording Company)

**POST-AMENDMENT COPYRIGHT ACT 1987
(AMENDMENT 2012) – which CMO has to be declared by Copyright Controller**

MACP

Declared in Sept 2012

PPM Declared in Mar 2013

PPM

LINKING MUSIC
WITH BUSINESS



RPM and PRISM Declared in Jul 2013
(Represent Performers)

AGREED DETERMINATION BY EACH LBs
chaired by (Minister of MDTCA)
Distributable Royalties Ratio:
2 : 1 : 1

2 : Authors
1 : Sound Recording Company
1 : Performers



Establishment of MRM Public.
Ltd in Aug 2017 as single joint
licensing/body CMO to collect
royalties representing for
music:

- MACP (Authors)
- PPM (Sound Recording)
- RPM & PRISM (Performers)

MPLC
Declared in
Jan 2019
(represent
Motion
Picture on
non-theatrical
license (film))

Revocation of PRISM
on April 2019 as it
inability to act in the
best interest of its
members based on
section 27A(6)

The company is in
process of liquidation

Only MRM is authorized to collect royalties in single invoice for selected license. The
existing CMO will only empowered to distribute royalties to its respective members

2. Current Situation

2.1 Music Rights Malaysia Berhad (Ltd) – Music Category

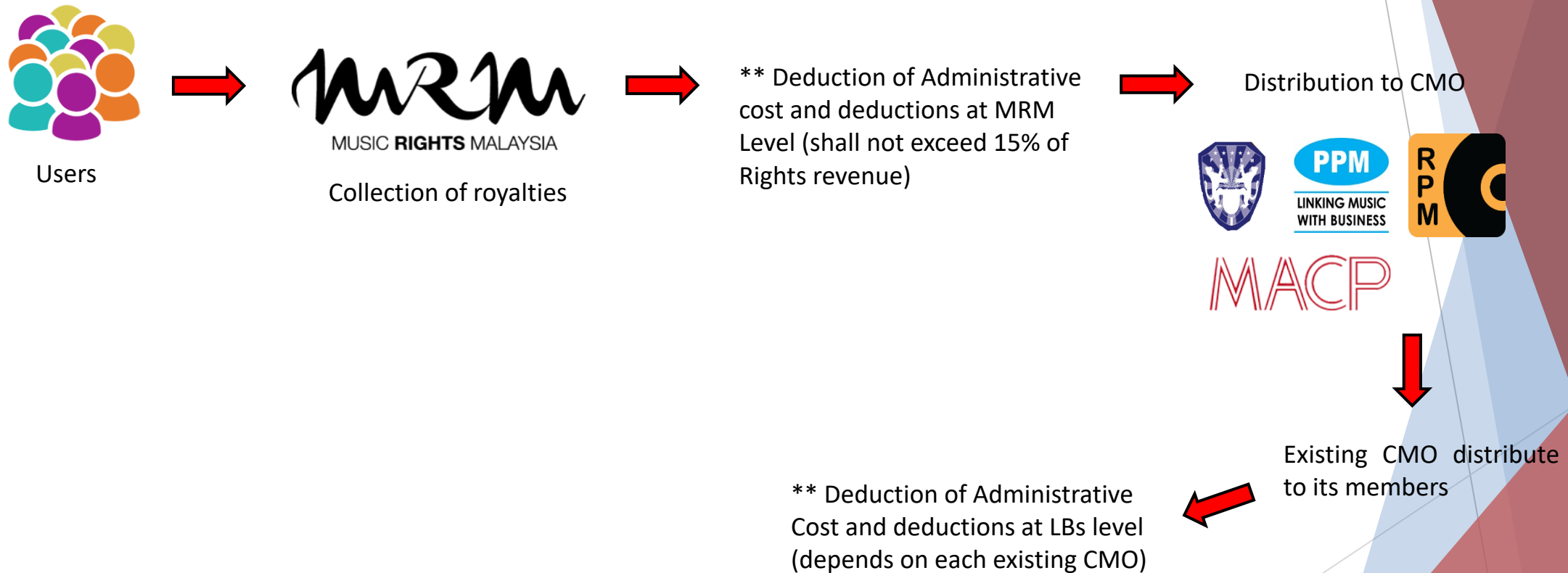


- One stop royalty collecting agent on behalf of existing CMO for selected licenses
- Prevent market confusion by issuing one single invoice for single repertoire for music
- Accountable, transparent and professional to ensure legal certainty for authors, producers of phonograms and performers through joint agreement
- Only applicable for selected license. License not stated in JV left for respective LBs to collect

2. Challenges

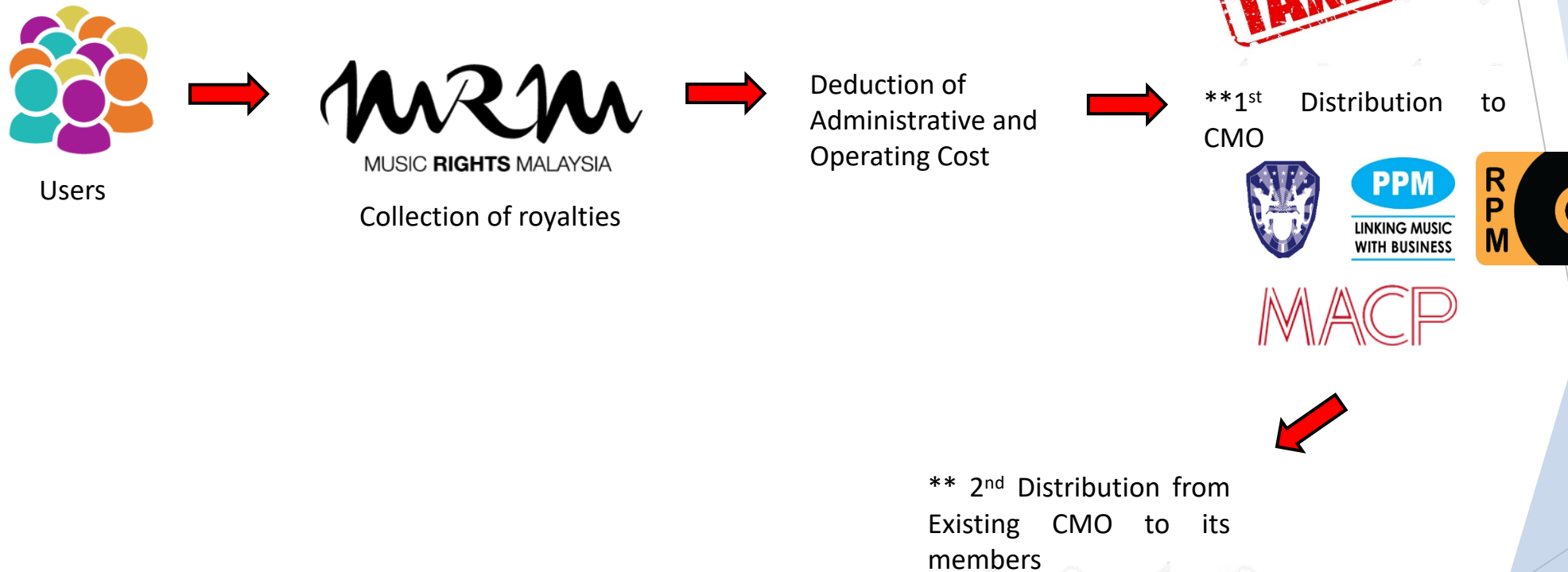
6. CURRENT SITUATION, CHALLENGES AND FUTURE PERSPECTIVES ON CMO

2.3 Distribution of Royalties : Administrative and deduction Cost



2. Challenges

2.3 Distribution of Royalties : Tax



** double tax has been incurred (huge deduction to members royalties)

** applicable for exemption of second level tax has been submitted to ministry of finance

6. CURRENT SITUATION, CHALLENGES AND FUTURE PERSPECTIVES ON CMO

2.3 Distribution of Royalties : Administrative and deduction Cost

- Reasonable administrative cost and deductions
- Administrative cost – should have a maximum amount that should not exceed by the LBs
- Deduction – as defined in constituent document/mandate – must be justified

2. Challenges

6. CURRENT SITUATION, CHALLENGES AND FUTURE PERSPECTIVES ON CMO

2.4 Tariff and Licenses

- Reasonable tariff
- Consultation with a group of users i.e retailers
- In line with value of the use of rights in trade – *EU CRM Directive Art 16(2)*
- Commercial decision between right holders and users with access to fair dispute resolution eg : Malaysian Tribunal, mediation, submission for arbitration

2. Challenges

6. CURRENT SITUATION, CHALLENGES AND FUTURE PERSPECTIVES ON CMO

2.4 Distribution Ratio / Policies



- Determination of distribution split in MRM based on ratio 2:1:1 (JV Agreement entered between LBs for selected license) or market driven tariff / license (pre-existing agreed tariff)?
- Market should decide the tariff / license instead of government determination
- To depart from existing 2:1:1

2.4 Transparency and Good Governance

- Art 5 of EU CRM Directive – *“Rightholders have the right to authorize a CMO of their choice, anywhere in the European union to manage their rights or types of works and other subject matter of their Choice”*
- Decision for right holders – should be made by right holders collectively
- Fair representation by right holders in annual general meeting
- Determination of Voting Rights – number of works registered vs amount received?
- Incorporation of CMO and legal form – Profit vs non profit? Limited Liability company, association, foundation, partnership? Semi government organization?
- Mandate and membership issues – awareness of right holders rights and mandate?
- Usage reporting from users – agreement with users to pay
- Bilateral agreement with sister societies abroad

2.5 Multiple CMO representing same category of work

- Two CMO representing one category of work/use in Malaysia (Performers)
- The need to consolidate/merger vs maintain the multiple representation? – best practices?
- Dispute with category of use / list of members mandate



Collect based on
mandate by way
of usage report



Collect based on
mandate by way
of usage report

2.6 Liquidation of PRISM Public Ltd (Performers)



Owed PPM Private Ltd sum of money
RM1.6 Million (not including interest)
through High court order dated 26 January
2015 i.e

- falsely representing to the public that they represent the recording performers members in collecting royalties

2.6 Result of PRISM Public Ltd (Performers)



PPM Private Ltd filed winding up petition to liquidate PRISM Berhad



- Declaration of PRISM Berhad revoked by MyIPO due to inability to act in the best interest of its members and no longer has the authority to act on behalf of its members



- PRISM now driven by liquidator (Insolvency Department of Malaysia)
- Directors of PRISM ceased to have power
- The company is prohibited to function its company object i.e collect and distribute royalties until terms and condition fulfilled through judgment order**



- Royalties due to performers CMO including RPM and PRISM has been retained by MRM through MRM Constitution until settlement is reached



** PRISM is now have to settle its debt with PPM Public Limited (liquidator) and several others, and prove that the company is solvent to continue its operation before royalties could be disbursed

2. Challenges

6. CURRENT SITUATION, CHALLENGES AND FUTURE PERSPECTIVES ON CMO

2.7 Independent Management Entities vs CMO



IME

****Independent Management Entities**

Section 27

- (1) Subject to this section, copyright shall be transferable by assignment, testamentary disposition, or by operation of law, as movable property.
- (2) An assignment or testamentary disposition of copyright may be limited so as to apply only to some of the acts which the owner of the copyright has the exclusive right to control, or to only part of the period of the copyright, or to a specified country or other geographical area.

- Most cases, for profit entities
- Not owned and controlled by Right holders



CMO

Collective Management Organization

Section 27A

- (1) A society or an organization which intends to operate as a licensing body for copyright owners or for a specified class of copyright owners shall apply to the Controller to be declared as a licensing body.

- Most cases, not for profit entities
- Owned and controlled by Right holders

**** whether IME should be declared as CMO or maintain as it is in line EU Directive 2014/26EU**

**** whether IME should be recognized as right holders and thus eligible to be members for each CMO?**

2.8 Legislative Support mechanism for non-represented right holders








- Extended Collective License System (ECL) to cover right holders that have not mandated the CMO to manage their rights
- Pro and Cons
- CMO that should manage require high level of transparency, accountability and governance
- Suitability of ECL in Malaysia Framework is still unclear

2.6 Disputes Settlement

- Administrative Settlement (Mediation/Arbitration)- Act as intermediary in cases where the CMO and the representative of users cannot find an acceptable solution by way of negotiations.
- Quasi-Judicial Settlement – Malaysia Copyright Tribunal
 - Issues on disputes on licensing schemes
 - Issues on disputes on equitable remuneration by performers
 - Issues on distribution of royalties between members of LBs (proposed amendment 2019)

3. Future Perspectives on CMO

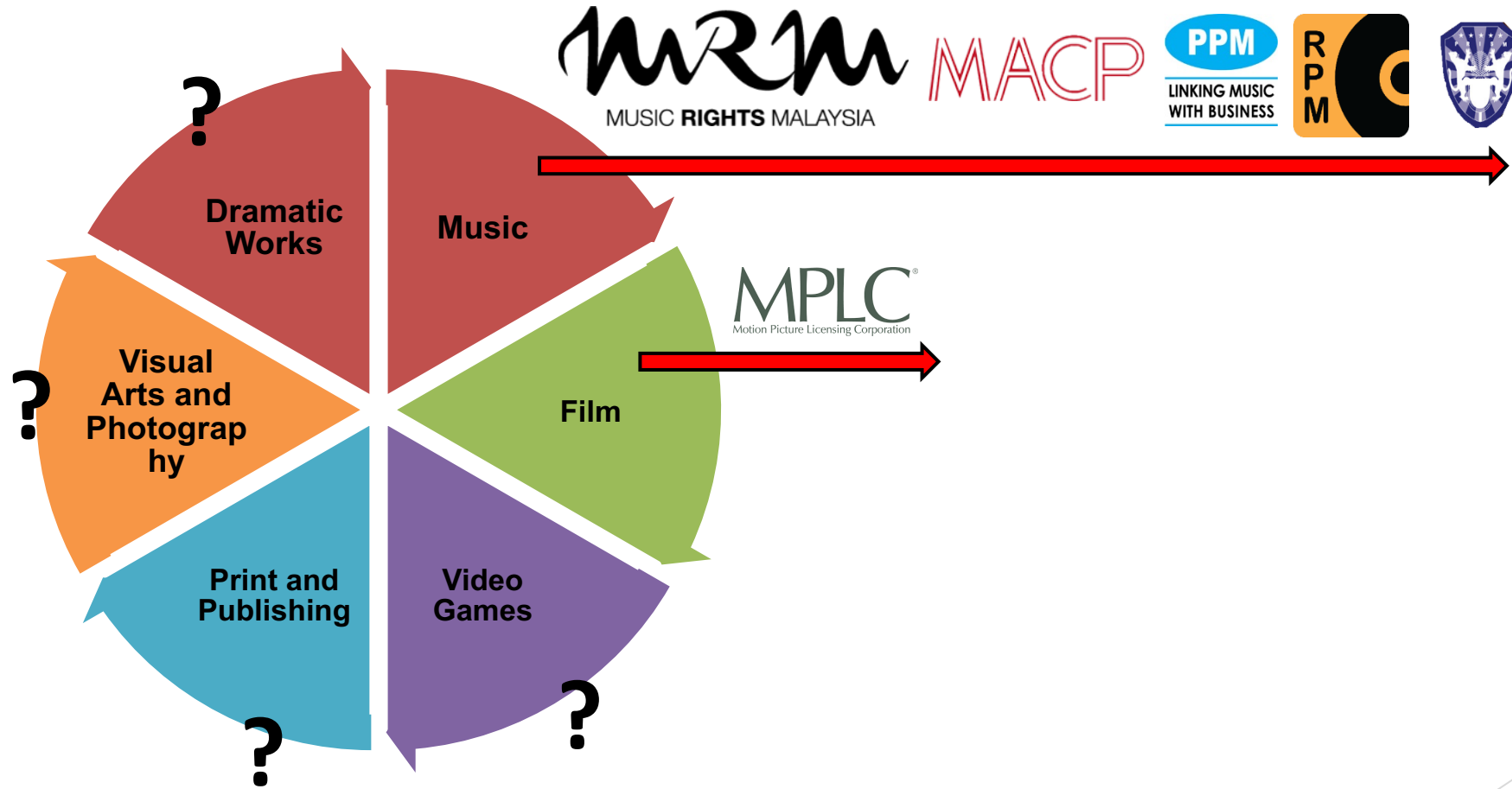
3.1 Way Forward

Genre	Existing CMO	Umbrella CMO	Major License
Music (Lyric & Composition)			**Mass Market for Public Performance (exc. Live Music) or any other licenses as the LBs agreed between themselves
Sound Recording/Phonogram			**Mass Market for Public Performance (exc. Live Music) or any other licenses as the LBs agreed between themselves
Performers			**Mass Market for Public Performance (exc. Live Music) or any other licenses as the LBs agreed between themselves
Motion Picture(non-theatrical)		N/A	Non-theatrical license
Reprographic	N/A	N/A	N/A
Scenarios and Scripts	N/A	N/A	N/A

6. CURRENT SITUATION, CHALLENGES AND FUTURE PERSPECTIVES ON CMO

3. Future Perspectives on CMO

3.1 Way Forward



6. CURRENT SITUATION, CHALLENGES AND FUTURE PERSPECTIVES ON CMO



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Thank you



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