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Introduction

Many songwriters enlist the support of music publishing companies to actively and creatively look for ways for their music to be used, to issue licences to people who want to use their music and collect the fees and income (Harrison, 2017). To acquire these services a songwriter assigns their publishing right to the music publisher in exchange for a royalty payment.

In the 1970s and 1980s and perhaps beyond, many young UK songwriters assigned their rights for the lifetime of the copyright which is the lifetime of the last remaining writer plus an additional 70 years after their passing. The US were not as fond of tying up songwriters on long copyright contracts.

In the early 20th Century, US Congress created legislation to prevent young authors from enduring bad deals at the beginning of their careers when they had little negotiating power (Jefferson, 2017). Then the law was revised in the 1970s when Congress determined that as the value of copyrights are unknown at the early stages, songwriters (or their heirs) have the opportunity to reclaim their rights after 56 or 35 years. Thus enabling them to take advantage of new and potentially more lucrative opportunities for their rights. Or they can even renew their contract with more favourable terms. Also another provision of this law is that as federal law it takes precedent over state and contract law in the US (Holofcener, 2012). There is no statutory reversion clause for copyrights in UK law, although rights periods are typically shorter now than there were in the past.

The US Copyright Act of 1976 section 203 enables songwriters to recapture their copyrights from their publishing companies after two consecutive terms of 28 years each, or 56 year if they were registered before 1978. However, songs that were granted rights after 1978 are entitled to be recaptured after 35 years (Christman, 2016). As reversion or termination of the right does not take place automatically, to initiate the notice, the songwriter has to send a note of declaration to the US Copyright Office and their publisher or rights holder with a notice to terminate the assignment within 2 to 10 years before the term elapses. As a result, many songs from the 1960s through to the 1980s are now eligible to be recaptured (Gamp, 2016).

Many artists like Billy Joel, Blondie, Tom Waits, Bryan Adams and Devo have recaptured their copyrights (Servantes, 2013). But the process is not without its problems. There are legal cases where songwriters had to defend their position on their rights to exercise this clause. The situation becomes even more complex when the artist is not from the US or their contract is governed by a non-US jurisdiction.

Legacy English act Duran Duran served termination notices in compliance with the US copyright law for their US copyrights but they were countersued by their publishers for breach of contract. The courts ruled in the claimant's favour and the band's notice was refused by an English Court. This case study explores the complexity of recapturing assigned US copyrights for UK and domestic US songwriters and it's wider implications for the music, media and entertainments industries.

Gloucester Place Music (Sony/ATV) vs Duran Duran

In 1980 and 1983 all five members of Duran Duran entered into publishing agreements with Gloucester Place Music Ltd (Tritec Music Limited at the time). Now owned by Sony/ATV, the company assigned the copyrights of songs from Duran Duran, for the lifetime of the copyright in exchange for the payment of royalties over a period of time. The agreements were governed by English Law (Lister, 2016).

Relying on US Copyright Act 1976 section 203, Duran Duran served termination notices to their publisher in 2014 to terminate the publishing assignments for the US copyrights for 37 of their songs which included their top hits "Rio", "Hungry Like a Wolf" and "Is There Something I Should Know".

Under this act certain provisions are made, notably:

- Work made for hire is excluded: if the author was hired by the company the works are deemed to be owned by the company. Songwriters are not employees of publishing companies
- Termination of the grant may begin within the first 5 years after the end of the 35 years when the copyright was granted
- The termination notice must be served in writing to all parties with an interest in the copyright
- Termination will be effected even in the case of an agreement to the contrary such as granting the copyright to another grantee
- Effect of termination - on the effective date all rights covered by the terminated rights revert to the author

In *Gloucester Place Music Ltd vs Le Bon & Ors* [2016] sued Duran Duran stating they were in breach of their contract by terminating their original agreements which did not expressly reserve their rights to recapture their US copyrights under the US Copyright Act 1976. The English High Courts considered whether Duran Duran at the time intended for their US copyrights to be assigned for the lifetime of the copyright and had a reasonable understanding of the agreement. It deemed the band was capable and therefore in breach of the agreement by seeking to terminate it.

Although the band's legal team highlighted the fact, that in a US Court of Law, the band would be granted the termination right as it is deemed an inalienable right, which was agreed by both parties, the judge said it was inadmissible as neither he nor the legal team claimed to have expert knowledge in US copyright law. Hence the key focus of the legal action was not the termination notice, but contractual law.

Urwin (2017) from TLT Solicitors goes further to explain how the judge considered the Rome Convention in relation to the law:

"Under US law, an author cannot contract away the right to terminate an agreement under which copyright is assigned. The Rome Convention allows for members states to give effect to compulsory rules of another country where those laws are closely connected with the situation. However, the Contracts (Applicable Law) Act 1990 renders the Rome Convention not applicable in the UK, so the Court did not consider this point."

Outraged and disappointed, Nick Rhodes founding member of Duran Duran, felt the judgement was a huge blow for the band and also other legacy artists whose US copyrights will be eligible for reversion in the next few years. In a statement he said, (BBC, 2016)

"This gives wealthy publishing companies carte blanche to take advantage of the songwriters who built their fortune over many years, and strips songwriters of their right to rebalance this reward. "If left untested, this judgment sets a very bad precedent for all songwriters of our era."

Their publisher, EMI whose parent is Sony/ATV stated:

"This has not been about seeking to challenge the US laws on copyright terminations, but simply a contractual issue in the jurisdiction of the UK courts to clarify the parties' rights on various songs."

Duran Duran were granted leave to appeal in February 2017 (Duran Duran, 2017), but no date has been set.

Scorpio Music vs Victor Willis, Village People

In another high profile copyright reversion case, former lead singer of 1970s band Village People, Victor Willis exercised his right to recapture "YMCA", "In The Navy" and "Go West". He was met with resistance from music publishers Scorpio Music and Can't Stop Productions who argued saying that Willis did not have an interest in the copyright as the songs were produced under a 'works for hire' relationship, and he could not claim his share because he did not have permission from the remaining authors.

The court dismissed the song publisher's claim in 2012 and Willis' lawyer stated the significance of the ruling is that one author can reclaim their rights under this statute regardless of whether the co-authors have invoked their claim or not. Willis now has partial ownership of the rights of the songs. (New York Times, 2012)

Similar to the Duran Duran case, Paul McCartney issued notices for 178 songs in the Lennon and McCartney catalogue since 2008 to his publishing company Sony/ATV as 2018

marks the end of the 56 year period of the term where some of the catalogue becomes eligible for copyright reversion (Gamp, 2016)

Many of the songs in question are Lennon solo compositions but McCartney shared a writer's credit so he could claim for his songwriter's share. Incidentally, Lennon's share of the copyright became eligible for reversion when he died in 1990, but it is believed Sony/ATV made a deal with Lennon's widow, Yoko Ono and now those copyrights are assigned to the publishers for the full copyright term ie lifetime of McCartney plus an additional 70 years (Christman, 2016).

When McCartney did not receive acknowledgement for his termination notices, he filed a suit in the US Courts in January 2017 asking them to declare he was not in breach of contract by exercising his termination rights. A lawyer for the music publisher said the notice remained unchallenged and that McCartney should wait as the Duran Duran case was pending in the UK. He declared, like Duran Duran, McCartney's agreement was governed by English law (Stempel, 2017)

Six months later, in June 2017, a letter of dismissal was issued by McCartney's representative saying both the claimant and the defendant reached a confidential agreement and the claim should be dismissed without prejudice.

Analysis of Termination Rights Lawsuits

The first eligible copyrights for reversion to their author or their heirs started in 2013 and is still at an early stage. The three high profile cases selected had key issues around their termination of rights suits.

Governing Jurisdiction

In the case of Duran Duran, the rights holder jurisdiction crossed the borders through mergers and acquisition activity over the years, potentially weakening the bands position when dealing with international matters on a contract governed by UK law (Brasner, 2016). This raises the question as to the arrangements required for global rights agreements enabling authors and creators to benefit from favourable legislation in foreign territories.

Lack of US law expertise

Even now as publishing contracts and rights periods are much shorter, the case demonstrates the need to include an expert in the law of that territory ie US law expert to present evidence in court. Perhaps as Gloucester Place were suing Duran Duran on the basis of breach of contract, it was not deemed necessary. Some commenters believed, if US copyright law evidence was presented the ruling may have been in Duran Duran's favour (Eversheds-Sutherland, 2017). It would be an interesting outcome if this evidence is added to the appeal if it goes ahead.

Works for hire argument

Under US Copyright law, a work for hire relationship assumes the copyright belongs to the commissioning company. Although the *Scorpio vs Willis* is one of the significant termination rights cases citing 'work for hire' as a reason not to accept notice, the expected number of legal cases to follow suit has not manifested. Perhaps we are still in the early throes of authors recapturing their copyrights or perhaps they are resolving their claim quickly and confidentially (Lee, 2015).

Expected co-writer majority to validate a claim

As in both Willis' and McCartney's cases, both claimed for their share of the publisher's copyright. Although we do know what the ex-Beatle received as part of his pro-rata settlement, a precedent has been set so that a majority agreement is not required to serve a notice to terminate the assignment and the rights can be returned to the notifying authors.

Wider Impact on the Industry

The Brexit effect

Copyright law may not change much after Brexit (Plummer, 2017), there is so much uncertainty around the divorce from Europe and how its effects could reach into different aspects of the music industry.

Interpretations of law

There is little precedent as yet for this legislation. As courts serve their own judgements and cases are brought before them, it may influence how songwriters (their heirs), records and publishers manage this process within the context of the law and judgements.

Possible change in music landscape

Record labels and publishers are part of the curator and tastemaker culture of music. Some artists may choose different release and accessibility strategies compared to their former rights holder with the potential to change the public and broadcast music landscape (Diaz, 2017).

Shift of power to build a better industry

Songwriters, artists, creators may be able to assume more leverage and negotiating power when armed with their own copyrights to creatively exploit at their will. It is unlikely that intermediaries will disappear but they may have a different role in the music value chain (Griffin, 2014).

Growth of new artist services market

The music industry could shift from a corporate controlled entity to an artist-centric one empowered by partners who share their success on their terms. There are a number of great services to handling the business and entrepreneurial side of music such as Kobalt and Sentric for publishing, TuneCore and Ditto for digital distribution and MusicGlue for ecommerce.

More favourable deals for songwriters

Songwriters with added value in their song catalogues could seek new deals or even renegotiate a better deal with their incumbent publisher. Catalogue sales outsold current music in 2015 for the first time ever, and with increasing digital revenues, legacy acts have significant leverage in the music market (Ingham, 2016).

Possible Solutions

Based on the case studies and analysis there are two core solutions when handling the complexities of termination rights regardless of the governing jurisdiction of the agreement or the citizenship or residence of the artist:

Seek advice about US law from a US law expert

The judge's decision was widely panned by different experts stipulating that US law says the provision cannot be circumvented and any efforts to do that is deemed void as the termination right is inalienable (Flanagan, 2016)

Avoid a writ

Termination notices can trigger overzealous publishers and record labels to sue. Subject to legal advice, engage with them first to see if an agreement can be reached. It is likely that as these notices become more commonplace there may be less friction and more creative and collaborative ways for songwriters, labels and publishers to work together.

Conclusion

Section 203 of the US Copyright Act 1976 - The Termination / Reversion of Rights - is incredibly complex putting the onus on the creator to claim back their rights after 56 or 35 years depending on when the copyright was registered. The US is the only nation with this clause within their Copyright Act and because it is a non-waivable and inalienable right, any author or their heirs with assigned US copyrights can claim back their copyrights when the term comes to an end. If a songwriter has a worldwide agreement with their publisher, the publisher retains that assignment.

However, this can be a threat to record labels and publishers who may lose some copyrights are the foundation of their business model for decades. In this case study, three high profile legal cases relating to termination notices were examined - Duran Duran (UK), Victor Willis (US) and Paul McCartney (UK). Aspects of the law concerning termination rights relating to governing jurisdiction of an agreement, foreign (UK) courts passing judgement on US law, work for hire being used as a voidance factor (US specific) and pro-rata termination rights availability. Victor Willis won his case in 2012, Paul McCartney settled his case in 2017 and Duran Duran lost their case in 2016 but were given leave to appeal in 2017

The impact of this legislation is far reaching in that it can benefit any songwriter around the world and can impact the industry favourably for artists. Labels and publishers may lose rights or may gain or retain rights but possible with lower royalty rates as songwriters have stronger negotiating power. As reversions take pace, there will be a shift in the music industry although it has not been as volatile as expected when the first rights were eligible

for reversion in 2013. This may be due to either lack of information or some artists waiting for a precedent to be set before making a claim.

Reportedly many artists including Billy Joel, Tom Waits and Blondie have already invoked their termination rights without publicity or known legal action and there is an expectation that industry professionals are watching developments carefully.

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