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Legal and Business Affairs
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Case Study

Legal and Business Affairs

Music Industry Legal Affairs

Contract

What is a contract?

"A contract is a legally binding promise (written or oral) by one party to fulfil an obligation to another party in return for consideration. A basic binding contract must comprise four key elements: offer, acceptance, consideration and intent to create legal relations."

Contract (Thomas Reuters Practical Law 2018)

The law of contracts guidelines must be followed at the business proceedings, and it is the most prominent areas of legal areas and it is legal bindings varies on circumstances and complexities at which the contract was drawn.

The legally binding contract must have the following factual details: Offer
Acceptance of that offer
A promise to perform a valuable consideration (promise of payment in some manner)

A time or event when performance must be made (meet form) terms and conditions for performance, including fulfilling promises; Performance

A unilateral contract refers to a promise of payment or give other consideration in return of an actual performance or work. The contracts can be made written or oral. Oral contracts are harder to prove in some jurisdictions and also a shorter time period within which one can sue in court.

Contract (The free dictionary 2018)

Contract essentials:

- Agreement
- Intention to create legal relations
- Consideration
- Capacity
- Contract must not be illegal or contrary to public policy

Acceptance:

Some terms and exceptions on the contract law

- If 2 companies have different terms and conditions the last terms and conditions would be accepted as the valid terms and conditions you are working on.
 - If you lose something or damage you may get to sue the other 2 contracting bodies.
 - If the person is underage, the contract would be made with the contractor's legal guardian.
 - If the senior person or in the meeting room and if the person signs the contracts then it can be tricky.

Fundamentals Breach of Contract

Undue Influence.

Void or voidable contract.

Two things

Undo-influence and restrained of trades are the two factors to set aside music contracts.

Restraint of Trade

The restriction for the artist that are unreasonable in the contract can be challenged in the lawsuit.

And of the most arguable points in this case would be a beyond the scope.

Music Law (New Media Law LLP 2017)

Music Industry Current Legal Case Study Spotify mechanical Copyright Lawsuit:

As the Music Industry shifts through change along with the technological advancement, it is facing more challenges both structurally and legally. New music laws and regulations need to be reformed to match the current transformations taking place in the industry. One of the most notably dominant lawsuits that could impact

the entire global music industry is the publishing rights lawsuit against Streaming giant Spotify for songwriters by Robert Gaudio, a songwriter and founding member of Frankie Valli and The Four Seasons, and Bluewater Music Services Corporation, July 2017. A lawsuit filed by Richard Busch who has become the best copyright litigator in the USA primarily known for his winning plagiarism lawsuit against Blurred Lines composers Robin Thicke and Pharrell Williams, representing Marvin Gaye's family; the companies accused Spotify of copyright infringement for streaming compositions have not licensed "mechanical rights". In this case, Spotify claimed that it find it challenging to identify composition owners as the publishing sector does not have a reliable structure to store that information.

Spotify acted out by filing a motion, claiming that it did not have to pay mechanical royalties at first place as streaming should be considered in akin to public performance as radio broadcasting and distribution royalties like physical and digital sales, not regulated by the same law practice from a decade and a half ago.

On the 13 September last year, Busch responded by first adding a request for sanction on Spotify's claim and filed a separate third complaint on behalf of seven publishing companies represented by the Songwriters Guild of America. In the respond, Busch debates this action by Spotify "is meant to drive up Plaintiff's costs", and pointed out the fact that Spotify admitted it needs mechanical rights in the comments section of the paper submitted to the Copyright Office in 2014. Moreover, he also mentioned Spotify argued in the court case early in 2017 to set a certain rate for the mechanical rights now claims it does not have to pay for it. As of the argument represented by Spotify might overturn the court settlement that approved streaming requires a mechanical license.

But this case is only relevant to the US jurisdiction as the mechanical licenses of other countries are distributed by the collecting societies.

Since downloads are not coming back, going out of business would not do any good for anyone involved, and the music industry as an entity as a failed business would not be able to make any payments.

How Spotify's Argument in Copyright Lawsuit Could Upend the Music Industry's Newfound Recovery
(Billboard 2017)

Since the download is not going to come back and the streaming services demonstrated a fitting go-format for music consumption, by driving Spotify into bankruptcy would only hurt the global music industry.

That is why the need for fitting new laws and regulations aligns with the new technological advances more than ever.

Critical Analysis:

And in Spotify versus Robert Gaudio case what Spotify claimed about the Publishing sector of music industry not having a reliable infrastructure to identify the composition owners is a very much recognised problem, one that is a prominent challenge have been dragging the music industry for decades. As a result composers and musicians not getting paid or get paid an incorrect percentage of royalties for their work. By law, Spotify should have filed paperwork of unidentified or found list publishers / compositions to the Copyrights Office. As the technology progresses and new ways of accessing music grow old laws and terminologies do not fit with the modern methods. In regards to this advancement music laws have to get updated.

If this overturn happens, is going to change the entire music industry's trading system and it could hurt re-climbing music industry's economic appreciation once again.

The UK music industry versus government on Copyright:
High court case:

The UK government introduced a private copying exception law in October 2014, permitting individuals to make private copies of copyright work for private use.

Soon after this law came into force, a private copying exception without levy, some of the music industry's main bodies have challenged the decision and applied for the Judicial Review and won this case in the Royal Courts of Justice. It concluded by judge MR JUSTICE GREEN even though the government correctly identified the law in this sector; the decision made based upon insufficient evidence that the exception would cause minimal harm was incompetent, hence it would be considered unlawful.

Quashing of private copying exception
(GOV.UK Intellectual Property Office 2015)

The conclusion from the court papers as follows:

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/06/2015

Before :

MR JUSTICE GREEN

Between :

THE QUEEN on the application of

(1) BRITISH ACADEMY OF SONGWRITERS,
COMPOSERS AND AUTHORS

(2) MUSICIANS' UNION

(3) UK MUSIC 2009 LIMITED

Claimants

- and -

SECRETARY OF STATE FOR BUSINESS,
INNOVATION AND SKILLS

- and -

THE INCORPORATED SOCIETY OF
MUSICIANS

Defendant

Intervener

“(viii) Conclusion 205. All of this leads me to the conclusion that the Defendant acted lawfully in adopting the more limited “lost sales” concept of “harm” as opposed to the broader “licensing test” advanced by the Claimants. In my view there was a proper basis in economic and legal logic for choosing to adopt this basis in the United Kingdom. The decision taken by the Secretary of State was a rational one which is consistent with EU law. My conclusion is therefore not that the licensing test is wrong in principle; but only that the issue properly falls within the discretion of the Member States and the choice of the sales test was a lawful choice. 206. Nonetheless, this is an issue of great significance. I accept that if I am wrong and Member States have no discretion and must adopt the licensing test then a conclusion based upon the Claimants’ analysis would go to the heart of the legality of the decision to introduce section 28B without a compensation scheme. And I also accept that the Claimants’ contrary arguments are neither trivial nor can be dismissed so easily that I can reject them as *acte claire* wrong. 207. I will consider the implications of this when I consider remedies. “

High Court Judgement (GOV.UK 2015)

Critical Analysis:

This court case highlighted the fact of blurred lines in the Copyright Law and the lack of evidential support conducted. Many units in this law sector do not address the complicated issues in the sector adequately. However, it marked a victorious landmark for the UK Music Industry especially winning a case against the Government and a stepping stone in the Intellectual Property sector.

Ed Sheeran plagiarism copyright infringement case

Two US composers Martin Harrington and American Thomas Leonard claimed that Ed Sheeran had used part of their song in his composition Photograph from their song Amazing, without their consent. The song was composed for former X Factor winner Matt Cardle and was released in 2012.

By the Plaintiff's claims the song Photograph has 36 identical notes of that song Amazing, and the similarities of the song are immediately noticeable.

Also noted by the Plaintiffs the song reached a great success, sold more than 3.5 million copies, synced in the Hollywood drama "Be before you" and constantly used by TV and films.

Giving the similarities when the song was going through the publishing, recording, releasing and distribution stages it has been infringing the copyright titles of the composition owner's of the already existing song. BBC music claimed, "The copying of Amazing by Photograph is breathtaking in its deliberateness, magnitude, and hubris".

Ed Sheeran is being sued for \$20m by two songwriters over his track Photograph (BBC 2016)

Critical Analysis;

This is one of many copyright infringement cases happening in the USA and globally. It reported that the Copyright and Intellectual property related lawsuits raised since the copyright infringement case of Blurred Lines led by the leading litigator in this field Robert Busch. Throughout this case study research also shows and an article

by Hannah Ellis-Petersen (Guardian 2017) highlighted the facts that the main ingredients that make hit music are similar and 25% of the number one US hit songs over past 60 years are written in the G major.

“[Sheeran’s case] is most likely an example of cryptomnesia – inadvertent plagiarism – when you mistake a memory for a new idea, which can accidentally slip through in the songwriting process,” Bennett said.”

“I would say that a slightly concerning culture is emerging around this becoming quite a lucrative enterprise for the lawyers involved in the States,” Siddell said. “It’s also no coincidence that the common thread between these cases is that they are being brought in America and by one particular lawyer.”

Hannah Ellis-Petersen (Guardian 2017)

Robin Thicke and Pharrell Williams appeal against the ruling of copyright infringement case:

In the famous Blurred Line infringement case against musicians and composers, Robin Thicke and Pharrell Williams by Marvin Gaye family let by the famous litigator Robert Busch in 2015 judge rules in favour of Marvin's family and granted 50% of the song's ownership plus \$7m dollars compensation. The song was the biggest selling single of 2013.

In the development of this case, Robin Thicke and Pharrell Williams are appealing against the decision. They argue that the case should have never gone to trial and the decision should be overturned. Pharrell who testified in court claimed that at the time writing the song Marvin Gaye's song was in his mind and he was channelling that 70s flair in his music. However, he did not admit to copying from the song. The reason for the appeal is the judge gave a number of improper instructions to the jury.

Robin Thicke and Pharrell Williams appeal against Blurred Lines copyright ruling
(BBC 2016)

Conclusion:

Conclusion: From this case study further confirms the need for new laws and regulations to fit with the changing music industry. Increasing amount of Copyright lawsuits shows one way more appreciated approach to the importance of one's Intellectual property, the actions taken valued its owners.

As the music industry develops and becomes more united through the help of technology, intellectual property complications and its valuations are becoming a heart of the creative industry. All the unnecessary middlemen companies are being reduced by the creators of music and other creative industries to get properly evaluated for

their work. Few Major enterprises have always run the industry as a whole, and the musicians were not rightfully appreciated for the work they put in. The whole global music industry's infrastructure is in reevaluation stages thanks to the Blockchain technology coming into the operation, getting behind musician's rights and making advances in the licensing and distribution sector. Lawmakers are taking note of the great changes happening within the creative industries and making progress. A collaboration between the lawmakers and the technology creators are a must-go-to ingredient to succeed in the fast advancing technological era, and the Blockchain technology is the forefront method to make it happen. Those changes are natural development process that was bound to happen. Now it is time to nurture this process and develop the most fitting infrastructure for both virtual and reality tradings that would benefit both entities running together in harmony.

REFERENCES:

Thomas Reuters Practical Law 'Contract' 2018
[https://uk.practicallaw.thomsonreuters.com/4-107-6271?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/4-107-6271?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)
[Accessed 3 January 2018]

The free dictionary 'Contract' (2018)
<https://legal-dictionary.thefreedictionary.com/contract>
[Accessed 2 January 2018]

New Media Law LLP 'Music Law' (2017)
[Lecture Notes accessed 11 December 2017]

Billboard 'How Spotify's Argument in Copyright Lawsuit Could Upend the Music Industry's Newfound Recovery' (Billboard 2017)
<https://www.billboard.com/articles/business/7964869/spotify-mechanical-rights-legal-argument-upend-music-industry-recovery>
[Accessed 8 January 2018]

GOV.UK Intellectual Property Office ‘Quashing of private copying exception’ (20 July 2015)
<https://www.gov.uk/government/news/quashing-of-private-copying-exception>
[Accessed 21 December 2017]

GOV.UK ‘High Court Judgement’ (2015)
<https://www.judiciary.gov.uk/wp-content/uploads/2015/06/basca-v-sofs-bis-judgment.pdf>
[Accessed 25 December 2017]

BBC ‘Ed Sheeran is being sued for \$20m by two songwriters over his track Photograph’ (9 Jun 2016)
<http://www.bbc.co.uk/newsbeat/article/36486648/ed-sheeran-is-being-sued-for-20m-by-two-songwriters-over-his-track-photograph>
[Accessed 20 December 2017]

Hannah Ellis-Petersen, Guardian ‘Ed Sheeran may regret Photograph that led to \$20m copyright case’ (11 Apr 2017)
<https://www.theguardian.com/music/2017/apr/11/ed-sheeran-20m-dollar-copyright-claim-matt-cardle-x-factor>
Accessed [4 January 2018]

BBC ‘Robin Thicke and Pharrell Williams appeal against Blurred Lines copyright ruling’ (August 2016)
<http://www.bbc.co.uk/newsbeat/article/37185954/robin-thicke-and-pharrell-williams-appeal-against-blurred-lines-copyright-ruling>
[Accessed 24 December 2017]