

Collective Licensing in Cyprus

Recent Developments

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The need to protect copyright works

- Copyright law worldwide has granted since 1886 to the authors of books and plays, to the composers and lyricists of songs and to artists creating 2 dimensional artworks the exclusive right to decide in what circumstances and for how much their creations should be licensed. In the EU these copyright works are protected for the entire life of the author plus another 70 years
- During the 20th century this protection was also extended to sound recordings, films and broadcasts as technology evolved and these new forms of technology deserved and required protection. In some countries these protections were called neighbouring or related rights.

How do copyright owners protect their copyrights?

- These copyrights and neighbouring rights are used everywhere. Every shop, restaurant or club that uses a song that is in copyright needs permission (usually in return for a fee) to do so. Every live performance of that song also requires a licence and payment.
- But how can a copyright owner police the mass use of their copyrights across the world, ensure that the copyrights are properly licensed at a fair fee and if not that effective enforcement mechanisms are available to do this?
- Enter the collecting society or collective management organization and the complicated, controversial world of collective licensing, to provide the answer where it is impossible or impractical for copyright owners to do so

Monopoly rights vs Competition Laws?

- All intellectual property laws create monopoly rights whether its 3 years for a design, 20 years for a patent, 25 years for a registered design, life plus 70 for a copyright or perpetual for a registered trademark.
- Nothing wrong with the existence of these monopoly rights- problems only begin to arise with how these monopoly rights are then exercised
- And this has created a tension between protection of IP laws and the demands of fair competition and commercial enforcement of these rights.

EU regulation of Collecting Societies

- Most acute within the European music industry during the 20th century and by the early 2000's there was massive pressure on European music industry collecting societies to adopt a code of conduct that would be acceptable to the European Commission.
- EU Directive 2014/26/EU on *Collective management of copyright and related rights and multi territorial licensing of rights in musical works for online uses* ("the Directive"), which had to be specifically implemented across the EU by 10 April 2016
- Implemented in Cyprus in 2017 by *The Collective Management of Copyright and Related Rights and the Granting of Multi-territorial Licenses for Online Uses of Musical Works Law (65(I)/2017)* ("the Law")

Main provisions of the Directive

- The Directive forced collecting societies to adopt common principles throughout the EU as follows:
 - Rights of rightsowners to authorize licensing of their works through collecting societies
 - Transparent membership rules
 - Management of rights revenues
 - Fair and transparent policies for distribution of rights revenues amongst rightsowners
 - Effective and timely enforcement procedures including ADR

The Law goes beyond the Directive

- EU Directives provide a minimum set of legal rules that needs to be introduced by member states by a specific date. Contrast with an EU Regulation – such as the Design Regulation- which directly imposes laws on member states from the date of its implementation.
- Some states legislate beyond the requirements of a Directive and Cyprus did this with the Law.
- In particular the Law established a new independent body in Cyprus called the Copyright and Related Rights Authority (“the Authority”) as the competent supervisory authority.

The Copyright and Related Rights Authority

- The Authority has been recognized by the Cyprus Intellectual Property Office as the competent supervisory authority for the collecting society management legislation.
- The Law also requires collecting societies and independent copyright management entities to be registered with the Authority
- But here is the problem.....THE AUTHORITY HAS NEVER BEEN CONSTITUTED OR MET! No regulations have been issued regarding its operations or anyone appointed to it.

Collecting Societies in Cyprus

- The main area within which collective licensing operates in Cyprus is in respect of the music and recording rights sectors.
- Note that there is a difference between the copyright in a musical work (the song) and the sound recording of that song (the recording)
- These have different owners and the licensing and collection of these separate rights is entrusted to PRS (Cyprus) for musical works, and Grammo for sound recordings
- Accordingly in Cyprus users are obliged to pay for two separate licences. However, these licences must be offered on fair and reasonable terms.

The Proposed Amendments to the Law

- Dissatisfaction in Cyprus from user organisations with the way that the collecting societies operated in resolving disputes persuaded the House of Representatives to propose two amendments to the Law
- Proposed Amendment 1 sought to enact a user-determined interim fee payment. This would allow users to pay what they considered to be a fair payment plus half of the remaining amount into escrow pending resolution of the disputed half
- Proposed Amendment 2 sought to establish a one-stop shop payment whereby users would be allowed to pay one flat fee payment to a CMO for distribution to other societies

The Fate of the Proposed Amendments

- These proposed amendments were referred by the President of the Republic to the Supreme Court which found them to be unconstitutional as they infringed the property rights in Articles 23 and 26 of the constitution of the Republic.
- This means that copyright owners have no clear public authority to turn to for redress about the way that their collecting societies management their copyrights and distribute revenues

What can copyright owners do if unhappy with their collecting society?

- Where possible license direct
- Change collecting society
- Follow internal rules (if they exist) for independent and effective dispute resolution
- Mediation
- If all else fails court proceedings either to District Court or possibly to the Administrative Court

What can users do if faced with unreasonable demands from collecting societies?

- Follow internal rules (if they exist) for independent and effective dispute resolution
- Mediation
- If all else fails court proceedings either to District Court or possibly to the Administrative Court
- Lobby House of Representatives for new proposed amendments which would comply with constitutional law
- Use musical works and recordings which do not fall within the repertoire of the collecting societies.
- Welcome to the world of AI generated music!