



MUSIC CASE STUDIES

Case Study 1

Recently, one of our music clients received a threatening solicitors letter written on behalf of a company that claimed to own the copyright in one of our client's most popular "back catalogue" recordings. The letter also claimed that the band concerned had signed an exclusive deal with the company.

Our client was shortly to record the band performing in concert and was understandably rattled by the threat that it would be on the wrong end of an injunction, and that claims for damages and legal costs would follow.

So what were the rights that the company claimed to have? The opposition were surprisingly reluctant to clarify. Several letters from the client elicited nothing and we were instructed to investigate.

Faced with stonewalling, we advised that an application should be lodged at court for an Order requiring the opposition to hand over the documents in their possession. After a two hour hearing, the Master gave an Order for the disclosure sought and ordered the opposition to pay costs to our client.

So what did the documents reveal?

Well, the band had actually signed an exclusive deal. Trouble for the other side was that it only related to recordings that our client didn't intend to record.

And what about that back catalogue recording? A slightly more problematic scenario there. The original copyright owner had licensed the recording to our client on an exclusive basis. It had later purported to grant an "exclusive licence" to another company that had then granted an "exclusive licence" to our opponents.

Under UK copyright legislation, the subsequent licence to the opposition could not be an exclusive licence as it was not granted solely to the company in question (it was subject to our client's licence) and it was not granted by or on behalf of the copyright owner (a common problem in music licensing). No exclusive licence = no case.

So all in all, perhaps it wasn't surprising that the initial threats were not followed through. Our client can now decide whether to take matters further, having left the opposition in no doubt about its willingness to stand up for itself.

Case Study 2

Making available music via the internet is fast becoming a business proposition and sensation. The UK singles chart now takes account of downloaded tracks as well as physical sales. Sites such as "Napster" and "iTunes" are offering licensed music to consumers at their convenience. Mobile operators are rushing to provide their customers with the latest mobile music handsets. We are at the forefront of advice to the music industry in this brave new world.

All successful rights businesses must be prepared to both embrace technology and protect their most valuable assets - the rights they own.

In October last year, we were instructed by the British Phonographic Industry to represent the UK music industry as part of the multi-national effort to prevent individuals from making available sound recordings over the internet without any licence or consent from the copyright owner.

These individuals have downloaded peer-to-peer services and have stored thousands of sound recordings in "shared files directories" on their computers. They have then made these sound recordings available to millions of other users of the same peer-to-peer networks.

The individuals in question have the benefit of anonymity because the designers of the peer-to-peer services do not require users to identify themselves when they register for the services or when they use them.

The music industry has used these networks in the same way as any other user. It has gathered evidence concerning those that are making sound recordings available by establishing the IP address for a particular user whilst undertaking a download of sample recordings.

The IP address (combined with the time and date that it was obtained) enables the ISP to identify the user.

Having compiled lengthy evidence to explain the peer-to-peer system, the intelligence process and the evidence obtained we have managed applications to the court for disclosure of the identities of the individuals that have been found to have been making available sound recordings over the internet.

Subsequent litigation against the individuals concerned has resulted in a 100% success rate on settlements to date. Headlines such as "Internet Music Cheats in Court" (The Evening Standard) and "Internet Music Pirates Made to Pay Up" (The Times) have spread the crucially important message to the public at large.