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Journal

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Music Business Journal

- The Internet Publication for the Global Music Business -

Intellectual Property Law Updates

INFORMATION FOR READERS:

This resource aim to give a brief overview of developments in Intellectual Property law and other areas of law relevant to the music and entertainment industries. Each item is categorised according to relevant areas of the music or entertainment business, and by the date of uploading. Uploads are undertaken regularly and are organised on a monthly basis. These updates are designed to give general information for music and entertainment industry professionals and students interested in these areas. These Law Updates are not law reports or detailed references. Users who would like further information should research the relevant area thoroughly. Relevant references and links are therefore provided.

Law Updates also provides hyperlinks to other sites which may be of use or interest to students and those involved in the music industry. These are provided at the end of Law Updates under 'Music Business Law Links'.

This resource is compiled by Ben Challis. Ben is a UK lawyer specialising in entertainment law and a graduate of London University and The City University. Ben acts as General Counsel for Triple A Entertainments Limited and is Executive Producer for television of the Glastonbury Festival. Ben is a visiting Senior Lecturer in Law at Buckinghamshire Chilterns University College in England.

We are interested in your views on the Law Updates resource. Please forward any comments to : musiclaw01@aol.com

March 2003

HEALTH & SAFETY

Live Concert Industry

-GRAND JURY BEGINS ITS INVESTIGATION INTO THE STATION NIGHTCLUB TRAGEDY-

The Grand Jury began its investigation on February 26th behind closed doors at a National Guard training center in East Greenwich to decide whether anyone should be held responsible for the fire and the deaths of 97 people in West Warwick, Rhode Island. Most of the first Grand Jury session was devoted to preliminary talks between prosecutors and lawyers for the rock band Great White whose guitarist, Ty Longley, died in the blaze.

The investigation will centre on the causes of the fire, Great White's pyrotechnic display, the layout and construction of the nightclub and the use of inflammable soundproofing materials. There is also a dispute over whether Great White had permission to use pyrotechnics. The band has said it received approval to use special effects, but the two brothers who own the club have denied that they gave permission. Club owners Jeffrey and Michael Derderian, along with band members, could be indicted on state charges of involuntary manslaughter or second-degree murder. It appears that the brothers who own the club were about to sell the business and the Derderians were scheduled to begin transferring the liquor license the day after the disaster.

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Internet

- "Intellectual property is theft. Ideas are for sharing" -

Columnist John Naughton used this headline in his February 09 column in the UK's Sunday Observer newspaper advancing the argument that in the USA industry associations such as the RIAA (Recording Industries Association of America) and the MPAA (Motion Picture Association of America) have used politics and clever rhetoric to develop the concept of 'intellectual property' and to portray internet file swapping as 'theft' of this property. Naughton says that, in his view, the industry associations' aim is to 'signify the moral equivalent between sharing a track from a CD with a friend and stealing your neighbour's goods and handing them round'. Naughton goes on to point out that the new draft EU copyright directive (see Law Updates, February 2003) will impose criminal sanctions on large scale (e.g., for profit) piracy but not on individual file sharing and copying. See www.briefhistory.com/footnotes. The industry campaigning continues and the RIAA and MPAA have just published a brochure warning companies of the risk of internet piracy and work place related copyright infringement. See <http://www.zdnet.com.au/>.

COMMENT: *Most legal systems recognise that granting ownership of copyright and other intellectual property rights provides economic stimuli for those who create, invent and design for a living and provides protection against others taking credit for, or profiting, from their efforts. However, there are counter arguments that copyright law and intellectual property legislation has perhaps gone too far in protecting the rights of copyright owners. The recent extension of US copyright duration has been criticised as the 'end of public domain' and there is long standing third-world opposition to the exploitation of drug patents when free or 'at cost' use of these drugs would be of benefit to millions of people. Some claim that copyright protection has gone so far that it now actually stifles creativity and freedom of expression. There are many users on the internet who see nothing morally wrong in file sharing and many claim that file-sharing stimulates a demand for music (and possibly films). Finally, there are those who argue that intellectual property law protects the 'owners' of rights, and these owners are often 'big business' or other large scale concerns who are themselves, arguably, exploiting the actual creators of copyrights, designs and patents.*

Recent cases featured on this site such as RIAA -v- Aimster (2003), Sony Music Entertainment Ltd -v- Easyinternetcafes Ltd. (2003) and the original RIAA -v- Napster decision in 2000 show that courts in the USA, and other territories such as the UK and Japan, will award injunctive relief and financial remedies against the facilitators of peer-to-peer file swapping. However, the first instance decision in BUMA & STEMRA -v- KazaA BV (2002) in the Netherlands held that KazaA were not liable for file swapping as the service itself wasn't unlawful. Furthermore, the recent Norwegian decision to exonerate teenager Jon Johansen who wrote a de-scrambling programme so he could watch his old DVDs on his computer show that the courts do not always follow the music and film industries' preferred view (although both cases are to be appealed). One developing key thread seems to be of 'financial gain' - a service or individual may be liable only if there is a proven financial benefit from the unauthorised use of copyright material. The recent EU draft copyright directive is designed to provide criminal and civil sanctions against large-scale piracy and counterfeiting, and not against individuals.

Students might want to compare the views of the Recording Industries Association of America at <http://www.riaa.com/> with the approach of the Electronic Frontier Foundation at <http://www EFF.com/>. The EFF is the leading civil liberties organisation working to protect rights in the digital world. Founded in 1990, EFF actively encourages and challenges industry and governments to support free expression and privacy online. EFF is a member-supported organisation and maintains one of the most linked-to websites in the world.

For a different approach to the ownership of creative effort in the music industry see <http://www.recordingartistscoalition.com/>. The RAC, whose members include Sheryl Crow, No Doubt, Billy Joel and Don Henley, are lobbying for US legislation (in particular, the California Labor Code - which curtails employment agreements lasting beyond seven years and yet exempts recording agreements from this limit) to be amended to protect their interests as musicians and songwriters, and to curtail the negotiating dominance of record labels. Most recently the band **Incubus** have filed a lawsuit in the Los Angeles County Superior Court against Sony Music Entertainment to challenge the term of their exclusive recording agreement. The band have been tied to Sony for seven years, but still owe the label four albums. In response (February 11 2003), Sony filed a counterclaim at the Federal Court.

in Manhattan demanding delivery of four albums and alleging potential losses.

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Record Labels, Music Publishing, Artists

-OWNER OF SAMPLED SONG WINS COURT INJUNCTION-

Indian composer Bappi Lahiri has won a court injunction halting the sale of Dr. Dre protégé Truth Hurts' debut album and single based on claims that the hit song, "Addictive," sampled more than 60 minutes of one of his compositions, without credit. A federal judge in Los Angeles ruled that "Addictive" must be removed from shelves unless the composer Bappi Lahiri's name is added to the credits. Lahiri filed suit against Dre, his Aftermath Records label, and parent company Interscope/Universal Music Group, citing uncredited use of the Hindi song "Thoda Resham Lagta Hai," composed by Lahiri for the 1987 Indian film "Jhoothi."

Lahiri is seeking compensatory damages in excess of \$1 million as a result of the failure to give credit and the loss of his ability to properly promote his music in the United States. The figure represents a combination of the profits Lahiri's attorneys said the sales of Truth Hurts' music has reaped for Universal along with the losses suffered by their client. The album has sold in excess of 300,000 units. Universal had the choice of pulling all product from the shelves or affixing a sticker with Lahiri's credit on copies of the album still in stores. The trial date is set for June 17th 2003.

See www.mtv.com/news

For a general review of US copyright law, see Dr. David Moser's site <http://www.musiccopyright.net/>

LICENSING

Live Concert Industry

-UK PUB PAYS HEFTY PRICE FOR BREACHING PUBLIC ENTERTAINMENT LICENCE-

Pub licensee Peter Elton was fined £3,000 with £2,000 costs by Bromley Magistrates Court for two admitted breaches of the Pub's Public Entertainment Licence. Mr Elton admitted to allowing entertainment to continue for 45 minutes past the licenced curfew at the Alexander Pub in Penge on the Kent Borders in England. The licence conditions had been imposed to prevent disturbance to residential neighbours of the Alexander.

See <http://www.newshopper.co.uk/>

TRADE MARK, COPYRIGHT

Artists, Merchandising

-DOORS DRUMMER TAKES ACTION AGAINST NEW 'DOORS'-

A reunion concert featuring two original members of the Doors has prompted a law suit from original drummer John Densmore in the Los Angeles Superior Court for breach of contract and unfair competition. Original keyboardist Ray Manzarek and guitarist Robby Krieger have teamed up with vocalist Ian Astbury (formerly of the Cult) and Stuart Copeland, drummer with the Police, to play a concert in Los Angeles. Densmore claims that the band's name is owned as a partnership by the three living members and the late Jim Morrison's wife, Pamela Courson and that each partner has right of veto over use of the name. He claims that the 'new' Doors are misusing the band's name and logo and will confuse the general public.

Recent cases in the UK involving the use of original band names have included *Sweet* and *Bucks Fizz*. See www.news24.com/News24/Backpage

PATENTS

Internet

-INTERNET PATENT VIOLATIONS ALLEGED-

Acacia Media Technologies have asserted ownership of a number of patents which govern the process of transmitting compressed audio or video online, one of the most basic multimedia technologies on the Net. Acacia have just signed up its latest licensee, Mexican satellite telecommunication company Grupo Pegaso. Radio Free Virgin, the online music division of Richard Branson's Virgin Corporation, said it agreed to license the technology late last year after a careful legal review.

A number of basic Web technologies and practices have been subject to patent claims over the past year. Telecommunications giant SBC Communications is claiming rights to Web site "frames" and another company says it has rights to the e-commerce site staple known as the shopping cart. Acacia Media Technologies is part of a larger corporation called Acacia Research which holds intellectual property in several areas. One of its subsidiaries owns technology used in the television content-blocking V-Chip and last year alone earned close to \$25 million in royalties from that side of the business. According to the Company, their patents could affect virtually anyone involved in the business of providing on-demand digital audio or video, from software companies to network service providers to the actual content companies.

See <http://www.silicon.com/>

PRIVACY LAWS

Artists

-CATHERINE ZETA-JONES AND MICHAEL DOUGLAS BEGIN ACTION AGAINST HELLO!-

The action brought by Michael Douglas and Catherine Zeta Jones reached the High Court in London. The couple and Northern & Shell, publishers of OK, have brought an action against Hello! claiming that their privacy was invaded when a photographer secretly took pictures of their New York wedding and provided these to Hello! who then published the shots. The couple had an exclusive agreement with OK to publish official photos. The UK has no real body of privacy law and recent cases by celebrities such as Naomi Campbell (against Mirror Group Newspapers) and footballer Gary Flitcroft (A -v- B & C [2002]) have done little to develop the right to privacy set out in the Human Rights Act 1998 with the Court of Appeal giving a very wide definition to what the 'public interest' might be. Mr Justice Lindsay must have further alarmed the couple by stating in court that in the UK weddings must, by their very nature, be 'public' events as part of the ceremony involves asking members of the public if they know of any just reason why a marriage ceremony should not take place.

LICENSING

Live Concert Industry

-UK MUSICIANS' UNION SPEARHEADS CHALLENGE TO PROPOSED LICENSING LEGISLATION -

Organisers of live music in small venues, currently exempt from needing a Public Entertainment Licence (PEL) and 'pub' venues where two or less performers are featured (known as the 'two in a bar' rule) are becoming increasingly alarmed at the hidden costs and bureaucracy emerging from the UK Government's proposed Licensing Bill.

Audience magazine noted that 'far from deregulation or a boost to the industry, the legislation is likely to devastate the sector of live music where many aspiring performers take their first steps and others enjoy a modest living' (<http://www.audience.com/>).

The initial plan of scrapping PELs and including an entertainment licence free with a venue's liquor licence initially seemed positive - not now, as both the live music industry and the licensed pub trade

are becoming increasingly concerned. The plan to move liquor licensing from Magistrates Courts to local authorities is now opposed by the licensed trade and the live music industry is also alarmed that the new levels of local authority bureaucracy and increased costs will spell the end of small pub and club venues.

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Music Publishing, Internet

-JAPANESE COURT ORDER ENSURES THAT CLIENTS OF ONLINE KARAOKE SUPPLIES MUST PAY ROYALTIES-

The Daily Yomiuri Online reports that the Osaka District Court have ordered an online karaoke machine leasing firm in Osaka to take necessary measures to prevent its customers, who have not paid copyright fees for music to the Japanese Society for Rights of Authors, Composers and Publishers (JASRAC), from using music delivered online. The Court's ruling held that Hit One had been assisting its customers to infringe copyrights.

The verdict is a precedent for a number of forthcoming lawsuits of a similar nature in Japan and means that music distributors who do not take an active role in violating the law can, and will, be asked to take remedial measures to prevent infringements by users.

According to the Daily Yomiuri Online, Hit One leased karaoke machines and distributed music online to bars and restaurants in the Osaka and Hyogo prefectures. About 97 percent of the songs distributed by the firm were reportedly controlled by JASRAC. However, Hit One knowingly delivered music to a number of its customers who had not paid copyright royalties to JASRAC. Presiding judge Kazuo Komatsu said in his ruling, "The firm was responsible for confirming that its customers already closed a deal with JASRAC to use music, on which the copyright is controlled by the organization, before delivering karaoke machines to the customers." Hit One was also held liable for not cancelling leasing contracts with the customers or taking other measures to prevent customers from using the machines when the firm discovered the customers had not paid copyright royalties to JASRAC.

See <http://www.yomiuri.co.jp/>

LICENSING

Live Concert Industry

-2003 GLASTONBURY FESTIVAL PUBLIC ENTERTAINMENT LICENCE GRANTED-

After a meeting lasting until 00.30 the Regulatory Board of Mendip District Council finally granted the licence for the 2003 Glastonbury Festival. This was the festival's second application having initially been refused a licence because of the Council's worries about safety and security of local residents and the policing of local villages outside of the Festival site itself.

After the seven hour meeting on the 17th February, Festival co-organiser Emily Eavis said 'I am so excited but it was like going through a really painful paper shredder'.

See <http://www.glastonburyfestivals.co.uk/>

February 2003

HEALTH & SAFETY

Live Concert Industry

-US Double Tragedy Re-focuses Live Industry Attention on Event Safety-

Following on from the death of 21 clubbers in Chicago on the 17th February, America was reeling after the deaths of at least 95 people in West Warwick, Rhode Island when the band Great White's pyrotechnic display set fire to the venue where they were playing.

The 17th February tragedy was caused by security staff letting off pepper spray in a nightclub to break up a fight; this caused members of the audience to panic in trying to escape. The Rhode Island tragedy was described by state Governor Don Carcieri as 'a real disaster. The building went up so fast no one had a chance'. It was estimated that over 300 people were inside the one-story wooden building. 187 people were taken to hospital and over 30 remain critical. The low ceiling 'Station' club had no water sprinkler system as it was too small to require one by law. It also had no pyrotechnics licence although the band claim that they had checked in advance with the venue and permission for their display was given. Reports say that after the pyrotechnics ignited the roof of the venue soundproofing material also ignited and the fire spread in seconds. Governor Carcieri added 'if you weren't out of that building in 30 seconds you didn't have a prayer'.

In the earlier Chicago disaster, local fire chiefs pointed out that part of the club was supposedly closed to the public as it had previously failed fire safety checks.

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Record Labels, Music Publishing, Internet

-Court Grants Music Industry Second Major Victory In Aimster Case-

In a major victory in the fight against the unauthorised uploading and downloading of music and other copyrighted works, a U.S. District Court Judge granted an all-encompassing preliminary injunction against the file swapping site Aimster (Madster).

The Court's decision follows its ruling on September 4th granting the record companies' request for a preliminary injunction. In that prior ruling, the Court described the Aimster system as "a service whose very raison d'etre appears to be the facilitation of and contribution to copyright infringement on a massive scale." After issuing that opinion, the Court asked for proposals from the parties for the language of the Injunction. The record companies and music publishers submitted a proposal that the Defendants opposed; however, the Defendants did not submit their own proposal, arguing that it was impossible to filter out infringing recordings. The Court adopted the record companies' and music publishers' proposed Injunction in full, outlining the roadmap by which Aimster must act immediately to halt the massive copyright infringement it facilitates.

U.S. District Court Judge Marvin Aspen of the Northern District of Illinois ordered that Aimster implement filtering technologies now available so that it does not directly, indirectly, contributorily, or vicariously infringe copyrighted works over its network. Among other points, the Court Order sets forth the following:

- Aimster must immediately prevent its users from uploading and downloading copyrighted works or must shut down its operations until it can do so
- Aimster must employ technological measures to prevent copyright infringement
- Aimster must keep the Court updated on its efforts to prevent infringement

See the RIAA press release on <http://www.riaa.com/>

COMPETITION

Radio, Live Concert Industry

-US Senator Reintroduces Bill On Competition In Radio-

Democrat Senator Russ Feingold has reintroduced his **Competition in Radio and Concert Industries Act** on January 28th 2003 which he says will help consumers, small and independent radio station owners, and independent concert promoters by prohibiting anti-competitive practices in the radio and concert industries.

The Bill's introduction comes as the Senate Commerce Committee holds a hearing on the problem

of radio consolidation. Insiders say committee chairman, Republican Senator John McCain, is expected to sign on as a co-sponsor of the bill soon. The Committee expects to hear from representatives of leading radio station owner and concert promoter Clear Channel Communications, the National Association of Broadcasters, the Recording Artists Coalition and the Future of Music Coalition.

Says Feingold: "Since originally introducing this legislation in June 2002, I have seen a groundswell of interest both in Congress and among artists, consumers, independent radio stations, and local promoters in restoring fairness to radio. My legislation will reduce concentration and crack down on anti-competitive practices, such as the new 'pay to play' system." Feingold says the latter practice allows radio giants to "shake down the music industry."

See <http://www.recordingartistscoalition.com/>

See <http://www.billboard.com/>

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Record Labels, Music Publishing

-EU UNVEILS NEW ANTI-PIRACY LAWS-

The European Union Justice & Home Affairs Commissioner Antonio Vitorino unveiled a tough new draft anti-piracy code on Thursday January 30th designed to standardise the approach to piracy throughout the European Community. The new legislation would direct all member states to treat large scale piracy and counterfeiting as a criminal offence as well as a civil offence meaning that offenders would be liable for damages, fines and possible imprisonment. Rights owners could sue for damages and ancillary remedies such as accounts for profits and destruction orders whilst the authorities could shut down infringing companies and seize assets. The legislation would work alongside revised border controls allowing for the seizure of counterfeit and pirate goods.

<http://www.reuters.com/>

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Record Labels, Music Publishing, Internet

-JAPANESE COURT RULING FOLLOWS USA APPROACH AS PEER TO PEER FILE SWAPPING SERVICE IS SHUT DOWN-

The Tokyo District Court, in an interim ruling on Wednesday January 29th 2003, decided that the online music file-sharing service provided by MMO Japan Ltd has violated copyright law, thus supporting the Japanese music industry's stance. The decision follows the Court's April 2002 injunction, which prohibited Tokyo-based MMO's Internet file-swapping service in an action brought by the Japanese Society for Rights of Authors, Composers and Publishers (JASRAC) and 19 record labels. Damages have yet to be assessed. This ruling, the first such suit filed in Japan, follows on from actions brought in the US against Napster, Aimster and KazaA.

The service, which was provided by MMO Japan, automatically sent files over the Internet enabling online users to swap music and other files stored on their hard drives. The presiding Judge Toshiaoki Imamura held that MMO had financially benefited and was responsible for the service.

<http://www.japantoday.com/>

Also see "NEW ACTIONS IN CYBERSPACE" - DECEMBER 2002 LAW UPDATES

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Record Labels, Music Publishing, Internet

Sony Music Entertainment (UK) Ltd. & Others -v- Easyinternetcafe Ltd. (2003)

-UK INTERNET CAFÉ DOWNLOADS INFRINGE MUSIC COPYRIGHT-

Mr Justice Smith held that Easy-internetcafes were guilty of copyright infringement by allowing

customers to download music and burn CDs at their chain of internet cafes. Investigators for the BPI (British Phonographic Industry) found that hundreds of tracks had been downloaded in the cafes. Users paid £2.50 (approx US \$4) for the download and a further £2.50 to buy each CDR. Mr Stellicios Haji-Ionannou, owner of the chain of internet cafes, said that he will appeal the High Court decision and that the music industry was itself guilty of 'extortion' for overcharging for CDs and that 'copying music over the internet is no different to videotaping a programme to watch later'. In the UK 'time shifting' by copying TV programmes onto a VHS is legal (under the Copyright Designs & Patents Act 1988) for personal use but copying records and films otherwise unavailable is a copyright infringement. In the US case of RIAA -v- Napster (US, 2000) the so called 'VCR defense' failed to protect Napster against claims from the Recording Industry Association of America which shut the service down. Damages in the Easy-internet case have yet to be determined.

[See Adam Sherwin, The Times, 29 January 2003] www.timesonline.co.uk/law

The BPI (British Phonographic Industry) represents the recording industry in the UK.

COMMENT : *There is an interesting legal argument arising from this decision. In UK law there is a provision for making copies of a cable programme for private and domestic use (ie. 'time shifting'). Whilst clearly Easyinternetcafe's actions were not for private and domestic use (as they were selling the CDs) IF the delivery of music or films by the internet WERE held to be a cable programme (and there is authority for this in the case of Shetland Times -v- Wills (1997)) then private individuals could make copies for private and domestic use without infringement of copyright (under section 70 of the Copyright Designs and Patents Act 1988). As Mr Justice Smith stated, individuals could build up 'a substantial private library' for domestic use. This will be food for thought for the record labels!*

TRADE MARKS

Merchandising

Davidoff et Cie SA -v- Gofkid Ltd (2003)

European Court of Justice C292/00 (2003)

-USE OF SIMILAR MARKS-

This case concerned an action by Davidoff who distributed luxury cosmetics, clothing, tobacco, leather and other goods under the trade mark *Davidoff* which is registered in Germany and other countries. The defendants owned the mark *Durfee* - registered in Germany later than the Davidoff mark. The marks had the same script and the same distinctive styling of the letter *D* and *ff*. At first instance the claim was refused as it was held that there was no risk of confusion between the marks. The ECJ held that despite there being no risk of confusion between the marks, Articles 4(4)(a) and 5(2) of the EEC trade mark **Directive 89/104** provided specific protection for the first registered mark against a later mark which was identical with or similar to the first registered mark and which was intended to be used or was being used on goods or services similar or identical to the first registered mark.

(The Times, 22 January 2003).

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Record Labels, Music Publishing

-RAID ON SCOTTISH COUNTERFEITERS REVEALS A MAJOR OPERATION-

A man and a woman are being questioned after a raid on their Airdrie home in North Lanarkshire uncovered what is believed to be the biggest CD counterfeiting operation ever found in Scotland. Thousands of illegally copied CDs, DVDs and videos were discovered in the raid along with nineteen CD writers, 11 DVD writers and 15 video recorders. This MCPS-led raid (along with Strathclyde Police and Trading Standards officers) was designed to get to the root of the counterfeit problem in Scotland. It follows recent raids by other anti-piracy units that have focused on removing product from the market stalls themselves.

Nick Kounoupas of the MCPS Anti-Piracy Unit said: "Getting to the source of significant counterfeit

operations like this one is the real key to stopping the proliferation of counterfeit product. You can strip a market of illegal goods but within a few days, the illegal product is back." The two who were questioned could then face charges under the Copyright, Designs & Patents Act (1988), the Trade Marks Act (1994) and the Trade Descriptions Act (1968). The maximum penalty for counterfeiting a trade marks offences in the UK is ten years imprisonment. Late in 2002 Norwich Crown Court sentenced the owner of a counterfeit video duplication operation to 4 years imprisonment. See <http://www.mcps.co.uk/> for more information.

LICENSING

Live Concert Industry

-GLASTONBURY FESTIVAL'S 2003 PUBLIC ENTERTAINMENT LICENCE IS REFUSED -

The UK's biggest festival, Glastonbury, is having to re-apply for a Public Entertainment Licence after its initial application was rejected by Mendip District Council (MDC) despite no objections from MDC's own officers or statutory consultees. The new application will be heard on the 17th February 2003.

The Local Government (Miscellaneous Provisions) Act 1982 provides that responsibility for control of places of public entertainment (music, dancing, etc) rests with the district council or in London with the relevant London Borough. It would normally be an offence to organise public entertainment without a licence or to be in breach of any terms or conditions of a licence granted. At present the licensing of public entertainment applies to all indoor and outdoor events (except bar events with two or less performers). The relevant local authority will have a very wide discretion with the terms and conditions of the licence but as a minimum the authority can impose terms and conditions to secure the safety of performers and others present, to ensure there is adequate access for emergency vehicles and to provide toilets and sanitation and to prevent unreasonable noise and disturbance to the neighbourhood. The Public Entertainment Licence (Drugs Misuse) Act 1997 allows local authorities to revoke licences, impose terms or refuse to renew licences where there was a serious problem with the supply of controlled drugs on premises.

After being prosecuted for exceeding licensed numbers in 2000 the Festival took a 'year off' in 2001 and built the 'super fence' for 2002. Whilst most commentators agree that the fence was hugely successful, local residents argue it pushed trouble makers without tickets into local villages. If Glastonbury's re-application is again rejected by MDC the Festival can appeal the decision to the Magistrates Court (these are first tier courts in the UK which primarily exercise criminal jurisdiction but the courts also hear certain licensing matters and appeals from local authority decisions). See <http://www.glastonburyfestivals.co.uk/>. A student information pack is also available from the site. Local authority website: <http://www.mendip.gov.uk/>.

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Radio, Internet

-INTERNET RADIO SERVICE RESTRICTED-

Yahoo have agreed to a settlement with Sony Music Entertainment as part of a lawsuit filed by the US recording industry against the web portal's online music subsidiary, Launch Media.

The lawsuit, filed in May 2001 by the Recording Industry Association of America (RIAA), alleged that Launch violated copyright laws by giving its web radio listeners too much control over their song choices - allowing users to 'programme' their own station with tracks of their own selection which means that at the very least users can create 'virtual albums'. Yahoo will make a onetime payment to Sony for its past use, and the portal will enter into a nonexclusive license to broadcast Sony's songs on its LaunchCast radio service. The financial terms of the settlement were not disclosed (see <http://www.cnet.com/>).

This case again shows the recording industry's determination to force new media to either pay for the use of copyright material itself or make sure users and subscribers pay for copying or 'downloading'.

music.

January 2003

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TV, Film, Artists and Composers, Record Labels, Music Publishing, Internet

-US SUPREME COURT UPHOLDS COPYRIGHT EXTENSION-

In this case, the US Supreme Court finally confirmed the provisions of the US Copyright Extension Act of 1998. This Act, known as the 'Sonny Bono' Act after the late recording artist and congressman, extends US copyright protection to life of author plus 70 years (up from 50 years) and 95 years (up from 75 years) for works owned by corporations. The Act, passed after lobbying from Walt Disney and other media corporations (worried about older works falling into the public domain) returns certain works to copyright and gives extended protection to other works. It could be argued it is the end of the public domain as hundreds of thousands of works which would have become freely available are now protected by copyright laws.

(John Naughton, The Networker, Observer Newspaper 19/01/03).

See : www.observer.co.uk/business

See : www.briefhistory.com/footnotes

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TV, Film

CBS -v- ABC (2003)

US District Court NY, Judge Loretta Preska

-CAN A TELEVISION FORMAT BE OWNED?-

The protection of the format to television formats has become a complicated area for programme makers and lawyers. The leading UK case of Green -v- Broadcasting Corporation of New Zealand (1984) held that there was no copyright in an idea and that on the facts of that case the format rights to the programme *Opportunity Knocks* were not protected under copyright law. This case reaffirms that principle. CBS claimed that the programme *I'm A Celebrity Get Me Out of Here* was a copy of their programme *Survivor* and sought injunctive relief against ABC to prevent the programme going on air. ABC successfully argued that their show was an original format and that injunctive relief was not an appropriate remedy. Despite the judgement it is clear that the global television industry does not licence format rights - indeed both the programmes in this dispute were themselves formats licensed from third parties.

(Duncan Lamont, The Guardian Media, 20/01/03)

See : www.afrs.edu.au/studwork/essays/legalprot.html

TRADE MARK

Merchandising

Sieckmann -v- Deutsches Patent und Markenamt

European Court of Justice C273/00 (2002)

-A SMELL CANNOT BE A TRADE MARK-

EC law provides that a *trade mark may consist of any sign capable of being graphically represented* particularly words including personal names designs letters numerals shapes of goods or their

packaging provided that such signs are capable of distinguishing the goods and services of one undertaking from those of other undertakings (EC 89/104)

The Court's decision was that a smell (defined as *balsamically fruity with a slight hint of cinnamon*) could not be registered as a trademark whether as a chemical formulae, a description in words or by depositing a sample.

For background information on trade mark law see <http://www.fjcleveland.com/>

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Music Publishing, Artists and Composers

-NEW SOURCES OF INCOME FOR SONGWRITERS-

A recent study by the Informa Media Group shows that downloading mobile phone rings is a fast growing and lucrative business. Informa found that in 2002 songwriter's collection societies collected in excess of £44 million for composers and publishers and that the global income from mobile tone rings was in excess of US\$1 billion.

See <http://www.cnet.com/> for further information.

December 2002

TRADE MARK

Merchandising, The Live Concert Industry

Reed -v- Arsenal FC (2002)

-CAN UNOFFICIAL MERCHANDISE BE PREVENTED?-

The curious case against 'unofficial' merchandiser Mr Reed BY Arsenal Football Club (AFC) carried on. The initial hearing in the High Court, London, before Mr Justice Laddie resulted in an unexpected win for Mr Reed. The Court held that because Mr Reed made it quite clear that his goods were unofficial, AFC could not rely on the law of passing off or their registered trade marks for 'Arsenal' 'Gunners' (AFC's nickname) and two logos to prevent Mr Reed selling his goods near the club's ground.

The European Court of Justice overturned this decision holding that the unauthorised use of 'badges of allegiance' were protected by trade mark law. Mr Reed's use of the signs created an impression of a link between the goods he sold and AFC and AFC as the proprietor [of a registered mark] is entitled to prevent unauthorised use of their marks.

See <http://www.lawreports.co.uk/> ECJ: Case C-206/01

But in an unexpected twist the High Court 'overturned' the ECJ's decision allowing Mr Reed to continue selling his 'Gunner's' merchandise. The UK decision has sent tremors through the world of band merchandising with fears that a properly registered trademark will not protect bands or their merchandisers against third parties who sell branded goods where it is made clear that these goods are not 'official'.

COMMENT : *This case is very important in the music industry. Mr Justice Laddie's acceptance that trade mark law and the law of passing off would not protect the owner of a mark against a third party who made it clear that his or her goods were not 'official' sent alarm bells ringing in the music industry. Trade marks are increasingly used to protect against unofficial merchandise and to prevent unauthorised third parties using band names, marks and images without the permission of the owner.*

of the name, mark or image. The European Court took a different view and held that a registered trade mark gave protection beyond simple 'passing off' to give a near absolute right of registered trade mark owners to stop others using their marks even where the third party makes it clear that the merchandise is not connected with the actual trade mark owner. Clearly this is a more satisfactory position for merchandisers, bands and others who own marks in the music industry but as Mr Justice Laddie has decided not to follow the ECJ ruling the law is still unclear.

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-NEW ACTIONS IN CYBERSPACE-

Following on from the Recording Industry Association of America's successful action against Naps (RIAA -v- Napster, Judge Marilyn Patel, July 2000) where a preliminary injunction was granted Effectively shutting Napster down, further cases have now reached the courts. In April 2001 Aimster applied to the US District Court requesting that it declare that its service was legal. A number of organisations including the RIAA reacted by filing lawsuits against Aimster alleging contributory and vicarious copyright infringements. The District Court agreed that Aimster had clear knowledge of the infringements taking place using its service and that Aimster materially contributed to these infringements, could supervise them if Aimster wanted and Aimster financially benefitted from the (infringements) on its service. A preliminary injunction was granted. A decision of the activities of KaZaA in the USA is expected soon.

BUT in a Dutch decision, the activities of KaZaA were held NOT to infringe copyright in an action between KaZaA BV and the Dutch collection societies BUMA/STEMRA.

The Court held that as KaZaA BV could not prevent the exchange of copyright material between its users the service itself was not unlawful although the acts carried out by some users were certainly infringing copyright. This case will be appealed to the Dutch Supreme Court.
(See M magazine, Winter 2002, MCPS/PRS). <http://www.mcps.co.uk/> and <http://www.eff.org/>

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-NEW COUNTRIES SIGN UP TO INTERNATIONAL TREATIES PROTECTING INTELLECTUAL PROPERTY RIGHTS-

The World Intellectual Property Organisation (WIPO) has announced that the total number of contracting states for the **Berne Convention** (which sets out and defines minimum standards of protection for economic and moral rights for authors of literary and artistic works) is now 149 nations and that the total number of contracting states to the **Geneva Convention** (protecting phonograph copyrights) has reached 69.

Email: <mailto:Publicinf@wipo.int> for further information.

Music Business Law Links

Sampling

Sampling recordings and songs is an important area of law which record labels, publishers, musicians, composers and students need to understand.

For information on sampling and the issues involved in the law behind sampling see:

- BBC Radio1 at: <http://www.bbc.co.uk/radio1/onemusic/features/sample020526.shtml>
- Jen Bruce's article on this site at: <http://www.musicjournal.org/02sampling.html>
- US attorney Michael.P.McCready's site at: <http://www.music-law.com/>

Band Names

There have been a number of high profile disputes about band names recently including the names 'Liberty', 'Suede' and 'Blue'.

For a good general article see:

- BBC Radio1 at: <http://www.bbc.co.uk/radio1/onemusic/features/bandname229.shtml>

Becoming A Lawyer

A frequently asked question by Music Business Journal readers and students.

Click here for useful information: "Becoming A Lawyer" - by Ben Challis

Royalties

In the UK and other countries worldwide, collection societies collect royalties due from the use of sound recordings (for recording artists and record labels) AND for royalties due to composers, authors and music publishers from the use of compositions. They also collect payments due to performers and from the use of audio-visual copyrights (such as promotional videos).

The following may be useful websites:

- Music Business Journal's Links page: <http://www.musicjournal.org/links.html>



UK : Mechanical Copyright Protection Society (**MCPS**)



UK : Performing Right Society (**PRS**)



UK : Association of United Recording Artists (**AURA**)



UK : Performing Artists' Media Rights Association (**PAMRA**)



UK : Phonographic Performance Limited (**PPL**)



UK : Royalties Reunited (**Information**)



USA : American Society of Composers, Authors and Publishers (**ASCAP**)



USA : Broadcast Music Incorporated (**BMI**)



USA : US performing right organisation (**SESAC**)



USA : **Harry Fox Agency** (mechanical rights organisation)



USA : Sound Exchange