

# Sounds like copyright infringement

---

- ▶ Claim that a nightclub manager authorised the infringement of copyright by the playing of music without a licence
- ▶ The scope of who can authorise a copyright infringement is wide
- ▶ Important to ensure all necessary licences are in place for any copyright being used

## What's it about?

Phonographic Performance Limited and Performing Rights Society Limited (together the **Claimants**) own, as collecting societies, the copyright to numerous sound recordings, and issue licences to venues to permit those recordings to be played. In this case, the Claimants alleged copyright infringement in relation to the playing of sound recordings at a nightclub (the **Club**).

It was claimed by the Claimants that Ms Kelly Ormes (**Ms Ormes**) was liable for the infringement of the copyright because she was the manager of the Club and had therefore authorised the breach. Ms Ormes, however, argued that her job responsibilities did not include the hiring of acts to perform at the Club and in any event she had not chosen the music to be played on the night in question and may not even have been in attendance.

## Why does it matter?

The court concluded that Ms Ormes was the manager of the Club and had authorised the infringement of the copyright under s16(2) Copyright, Designs and Patents Act 1988 (**Act**). When determining whether Ms Ormes had the authority to hire acts to perform, the evidence before the court, including her terms and conditions of employment, provided limits on her responsibilities and made no mention of the hiring of acts. However, it was demonstrated that Ms Ormes took on day-to-day management of the Club, which included being the key contact for bookings for parties and acts, as well as managing the Club's mobile phone.

It was irrelevant whether Ms Ormes had chosen the music or not in determining whether she had authorised the infringement. By hiring the act to perform at the venue, Ms Ormes had given them authority to perform the songs of their choosing. In addition, the authorising of the infringement took place when the act was hired to perform and therefore it made no difference whether Ms Ormes was at the Club when the infringement took place.

## Now what?

It is important for music venues to comply with any necessary licencing arrangements in relation to the sound recordings that they play. "Authority" under s16(2) of the Act is wide and can include employees, as well as companies, whether acting explicitly or implicitly in authorising the breach. Simple day-to-day-actions from individuals in management roles can put them in the position of having "authorised" an infringement.

[\*Phonographic Performance Ltd v CGK Trading Ltd & Others \[2016\] EWHC 2642\*](#)

For further information on this or any other IP related matter please contact [Katie Kinloch](#) on 0161 934 6305