Kluwer Copyright Blog

DJs are Phonogram Producers, says Dutch Supreme Court

P. Bernt Hugenholtz (Institute for Information Law (IViR)) · Monday, January 31st, 2022

On December 17, 2021, in a big win for electronic dance music (EDM) artists, the Dutch Supreme Court held that DJs own phonographic rights (neighbouring rights) in their home-produced recordings – not the record labels that commercially release them. The decision comes in a long-running dispute between world-famous Dutch DJ and EDM artist Martin Garrix and his former record label, Spinnin' Records. Garrix had entered into a record production contract with the label at a very young age. Having become a successful DJ and finding the terms of the contract unfair, Garrix sought annulment for a variety of legal reasons. He also claimed that the phonographic rights that according to the language of the contract belonged to the label, were actually his own.

Martin Garrix backstage during day three of Web Summit 2017. Photo by Seb Daly/ Web Summit via Sportsfile CC BY 2.0.

Interpreting the Dutch Neighbouring Rights Act and its legal history, the Dutch *Hoge Raad* (Supreme Court) considered that the notion of a 'producer of phonograms' is to be construed in light of the relevant international conventions: the 1961 Rome Convention on neighbouring rights, the 1971 Geneva Phonogram Convention and the WIPO Performances and Phonograms Treaty (WPPT) of 1996. In line with these treaties, the Dutch Act defines a

phonogram producer as "the natural or legal person who manufactures a phonogram for the first time or who has it manufactured". According to the Dutch Supreme Court, the act of manufacturing (fixation) is essential to this definition. Accordingly, "that term should be interpreted as meaning that the person who organises the first recording and has the financial responsibility for it is the phonogram producer." Consequently, the Supreme Court upheld the decision of the Arnhem Court of Appeal, which had found that Garrix qualified as phonogram producer because the recording was done by Garrix in his home studio using his own equipment. The fact that the tracks recorded by Garrix were slightly modified at the label's suggestion prior to their commercial release, did not make a difference.

The Garrix decision contradicts the view – widely held in the music industry – that record labels automatically qualify as phonogram producers of the recordings they first release. As the case clarifies, the legal notion of 'phonogram producer' is not to be confused with the practical notion of 'record company'. Only the person or entity that both takes the initiative and bears the responsibility for a first recording will qualify as 'phonogram producer' and will be legally protected as such. Merely bearing the financial risks of record production, marketing and distribution is not enough.

Typically, electronic dance music is produced and edited by artists using their own equipment, and at their own initiative. Therefore, as the Garrix ruling illustrates, DJ's will normally qualify as first owners of the neighbouring rights in the recordings they produce, regardless of their release on a record label. Moreover, EDM artists will additionally enjoy neighbouring rights protection as performing artists.

But the Garrix decision is likely to have an impact in other sectors of the music industry as well. With the proliferation of affordable high-quality audio recording and editing equipment, musicians in many genres are nowadays recording their performances at home rather than in professional recording studios provided by the record labels. In such cases, too, the artists will probably be deemed 'phonogram producers'.

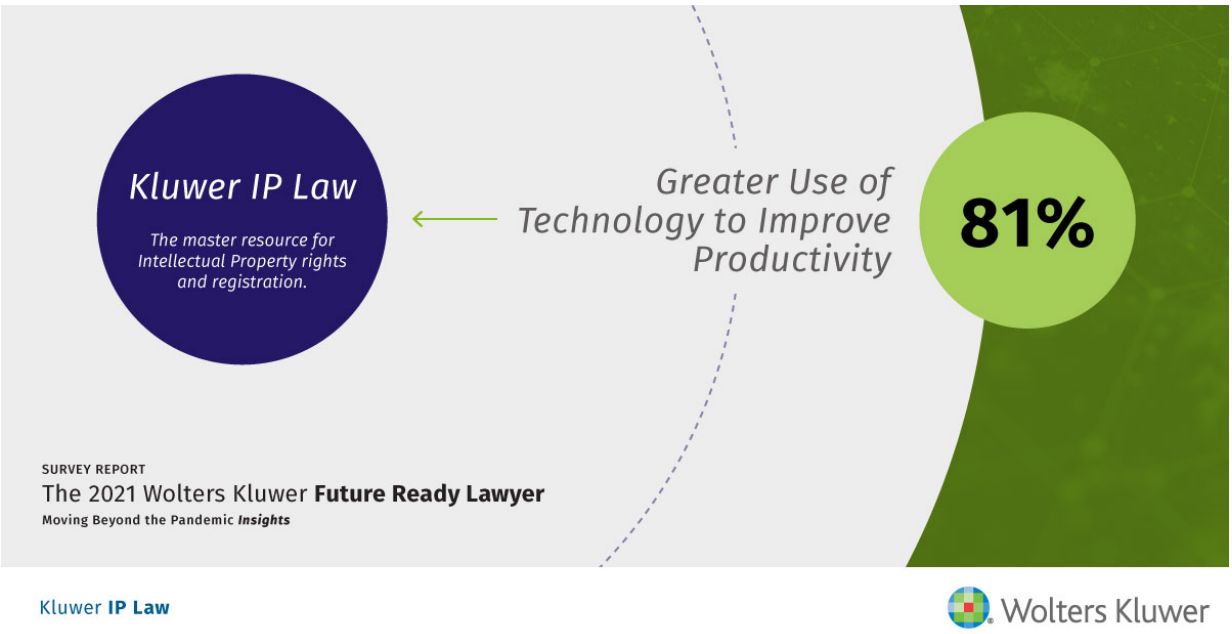
Disclosure: at the request of plaintiff Martin Garrix the author co-wrote a legal opinion on the issue discussed, which was introduced in court at an early stage of the proceedings.

To make sure you do not miss out on regular updates from the Kluwer Copyright Blog, please subscribe here.

Kluwer IP Law

The **2021 Future Ready Lawyer survey** showed that 81% of the law firms expect to view technology as an important investment in their future ability to thrive. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.



This entry was posted on Monday, January 31st, 2022 at 10:03 am and is filed under Case Law, Copyright, Netherlands, Ownership
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.