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France: Supreme Court makes music synchronisation safer

Brad Spitz (REALEX) · Monday, May 6th, 2013

"The Supreme Court puts an end to a French oddity and makes the business of music synchronisation safer. (…) The Supreme Court took the opportunity to settle two major issues in French neighbouring rights: (1) a collective management organisation may only take action for the defence of its own members; (2) the collective agreements entered into before the Act of 3 July 1985 granting neighbouring rights to performers, are still in force."

The Franco-Belgian movie Podium, released in 2004, tells the story of a Claude François lookalike who prepares for a contest. Claude François, AKA 'Cloclo', was a famous French pop singer of the 60s and 70s. In order to use recordings from the 60s and 70s in the movie, the producer of the film, Fidélité, entered into what is referred to as *'synchronisation agreements'* with the producers and owners of the recordings, namely EMI, Sony, Warner and Universal, who were supposedly the assignees of the rights held by the performers.

Had all the performers assigned their rights to the record producers? No! Not all, thought SPEDIDAM, a collecting society that mainly represents side musicians in the music industry. SPEDIDAM therefore brought an infringement action against the movie producer on the grounds of article L.212-3 of the Intellectual Property Code, which provides that "The performer's written authorisation shall be required for fixation of his performance, its reproduction and communication to the public as well as for any separate use of the sound or images of his performance where both the sounds and images have been fixed". In turn, within the same proceedings, the movie producer asked for a guarantee from the producers and the broadcasters.

This gave the Supreme Court the opportunity to settle two major issues in French neighbouring rights: (1) a collective management organisation may only take action for the defence of its own members; (2) the collective agreements entered into before the Act of 3 July 1985 granting neighbouring rights to performers, are still in force.

1. A collecting society may only take action for its own members

Claiming that the synchronisation of the film Podium infringed on the performers' rights, SPEDIDAM brought this case against the movie producer in order to defend the interests of the

collective interest of the profession, which is of course legitimate, and also to claim damages not only for the prejudice allegedly suffered by certain of its members, but also by artists that are not its members. Some are foreign, deceased or members of other collecting societies.

SPEDIDAM based its action on its articles of association (which authorise it to take action for performers, whether they are its members or not) in combination with article L.321-1 of the Intellectual Property Code (which provides that the "societies shall be entitled to take legal action to defend the rights for which they are responsible under their articles of association"). Surprisingly, since the beginning of the 90s, many courts, but not all, accepted this argument. Equally surprising, this issue was only brought to the Supreme Court in the present case, after over 20 years of incomprehensible and diverging court rulings.

In the present case, the Court of Appeal of Paris, in its judgement of 20 May 2011, declared that SPEDIDAM may not act in defence of the interests of performers that it does not represent. The Cour de Cassation, the French Supreme Court, in a judgement of 19 February 2013 has upheld this decision, stating that it follows from article L. 321-1 of the Intellectual Property Code, that whatever is provided by its articles of association, a collecting society may only defend the individual rights of a performer that has given the said society the power to take such action.

This solution of course applies to collecting societies that manage the rights of authors and publishers. This puts an end to a French oddity and makes the business of music synchronisation safer…

2. The collective agreements entered into before the creation of neighbouring rights are still in force

In France, performers are granted neighbouring rights on their performances since the 3 July 1985 Act (now codified in article L.212-3 of the Intellectual Property Code). In 1959, collective agreements had nevertheless been entered into between the national union of performers and the national union of record producers. These agreements provided that the performer who participates in a recording authorises the use of his interpretation in a movie, subject to receiving a fee in addition to the payment received for the recording session. SPEDIDAM claimed that when the 3 July 1985 Act came into force on 1 January 1986, the collective agreements terminated.

The judgment of the Court of Appeal of Paris rejected SPEDIDAM's arguments, stating that the recordings in question had been made in the framework of the 1959 collective agreements. The Supreme Court upholds this judgement, explaining that the 1959 agreements, which are binding on SPEDIDAM, must be interpreted as granting the producers the right to exploit the recordings for the sound of the motion pictures yet to come, subject to paying an additional fee to the performers. In addition, the Supreme Court notes that when the performers signed the attendance sheets during the recording sessions between 1963 and 1981, they had not made any reservation for the use of their performances.

It will now definitely be easier and safer to synchronise music recorded before 1986.

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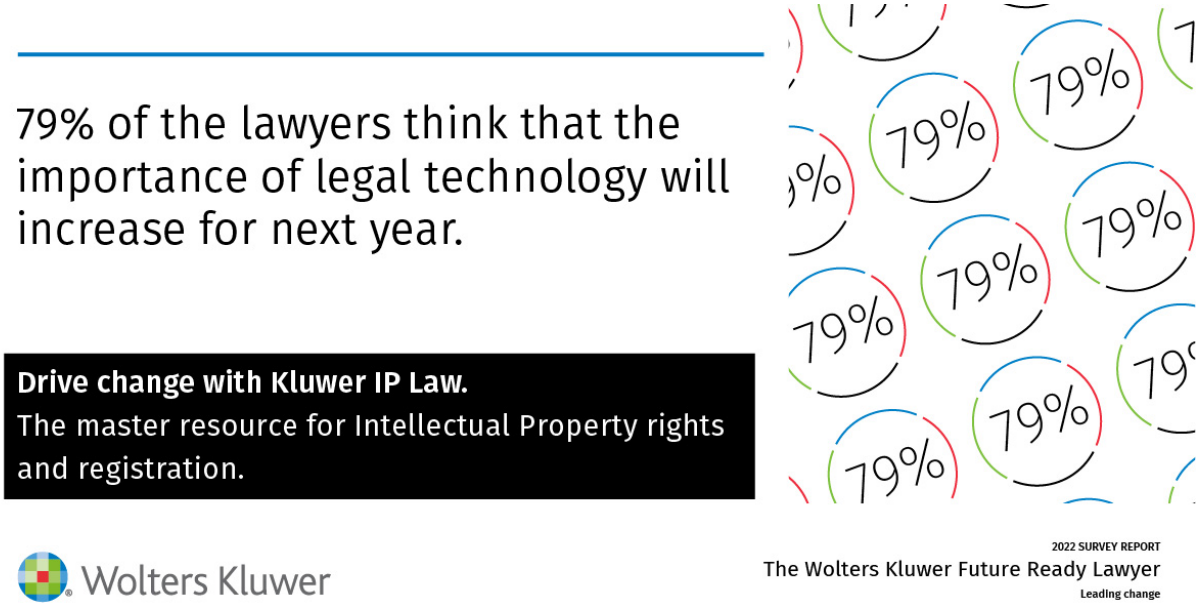

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