

## **IAEL / MIDEM UK LEGAL UPDATE SPEECH 2016**

2015 was another excellent year for UK recorded music which achieved a best ever 17% global market share. One of every six albums sold and half of the top 10 best-selling albums worldwide were by British artists, with Adele leading the way at number 1. The number of audio streams increased 82% to 27 billion plays, delivering a 69% rise in income to £146 million, but contrast that with the pitiful 0.4% increase to £24 million from the likes of YouTube and other ad-funded video streamers despite an even greater rise in plays of 88%, and then take on board the equally staggering statistic that the niche vinyl market, which represents less than 2% of music consumption, generates more revenue than ad-funded video streams, which represent almost 20% of music consumption, and you will understand that the UK is a prime illustration of 'the Value Gap' in action, the hot topic for debate of which more later on this panel. What this means is that, despite the increased sales activity and best ever global market share, in value terms recorded music sales dropped by about 1% to £688m.

Meanwhile the live music market in the UK continues to go from strength to strength and to outpace the recorded music market by some distance. Umbrella trade body UK Music's latest published research, which relates to 2014 and is on a Gross Value Added basis, shows live music generating £924 million compared to £615 million for recorded music and £410 million for music publishing.

On the statute books, we had an amendment to our Copyright Act overturned by the Courts. This was the Government's attempt to enact an exception for private copying and to remove the anomaly that consumers making private copies of recordings they have purchased or transferring them between devices were thereby infringing copyright. Unlike many of its European counterparts however, the UK Government did not see fit to impose a blank media levy to compensate rights holders for this exception. This led to UK Music, the Musicians' Union and the British Academy of Songwriters, Composers and Authors suing the Government for failing to provide fair compensation for rights holders in contravention of Article 5(2) of the EU Copyright Directive. Judgment was handed down shortly after MIDEM last year with the Court deciding that the Government's conclusion that minimal harm would be caused by the absence of a levy was based on manifestly inadequate evidence and flawed, and so our private copying exception was quashed. The Court refused to decide whether private copies made during the exception's brief existence were legal or not, which means all you law-abiding UK lawyers out there who waited all those years for the exception before uploading your CDs to your mobile device will have to delete them all again if you want to be able to sleep at night! And so the anomaly that private copying is illegal in the UK continues.

In the Courts, the real action has been in the continuing war between the newspaper industry and privacy claimants, many of them from the world of entertainment, a war in which my firm has been heavily involved.

The aftershocks of the phone-hacking scandal rumble on. To recap, the scandal came to light through numerous civil claims against News Group, all of which were settled before trial. An ensuing judicial enquiry into Press Standards led to the establishment of a new regulatory framework which the newspapers then refused to sign up to and they set up their own regulator instead. Criminal proceedings were pursued against various News Group executives and the Prime Minister's own former spin doctor, who had been editor of The News of the World at the time, was found guilty and sentenced to 18 months in prison. Just before MIDEM last year we had had judgment in the first batch of civil cases against the Mirror Group which had seen much higher awards of damages than expected, the largest being £260,000 to the actor Sadie Frost, with the evidence having shown systematic hacking of victims' phones several times every day over a period of several years resulting in the publication of numerous stories and the destruction of the victims' relationships with those closest to them whom they could not but suspect of leaking the information, to the point of Sadie Frost even insisting her own mother sign a Non-Disclosure Agreement. Mirror Group then appealed to the Court of Appeal but without success and they have since been refused permission for a further appeal to the Supreme Court. And so I am pleased to say that the damages awards stand as a precedent for others to follow.

In the meantime, the international news organisations have opened a separate front of hostilities against privacy claimants by seeking to

challenge existing UK privacy injunctions on the basis that the claimant's identity is no longer private if it is available on the internet following publication in other jurisdictions. There appears to be a worrying trend of international news organisations engineering publication of the claimant's identity overseas and drawing their UK readers' attention to the availability of that information on the internet, and then seeking to overturn the UK privacy injunction on the basis that the information is no longer private, amounting in effect to a deliberate attempt to circumvent the rule of UK law.

These issues have been aired most notably in the case of *PJS v News Group*. The anonymised claimant is one of a celebrity couple in the world of entertainment with young children who is seeking to prevent publication of a story that he had engaged in sexual activity as part of a threesome. At first instance, the Court accepted the private nature of such information and that there was no countervailing public interest so as to justify its publication, and so an injunction was granted. However, on appeal, the Court of Appeal was convinced that the injunction should be overturned because of News Group's argument that the claimant's identity was available on the internet following its publication in other jurisdictions and hence was no longer sufficiently private. Leave was given for the claimant to appeal to the Supreme Court before the injunction was lifted and the Supreme Court has just decided that the injunction should be maintained. The lead judgment firmly made the point that celebrities are not public officials and that, in the absence of a misleading public image which should

be corrected, there is no public interest in the publication of kiss and tell stories about their sexual encounters, however interesting to the public they may be. As such stories have been the mainstay of the UK tabloid press, I expect there will be more to come on this issue when we meet again in a year's time.

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