Prince and the Copyright Revolution (part one)

A recent turn of events represents a paradigm shift in copyright law, as artists are now on a more level playing field

by Patrick Soon and Rebecca Bellow

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Recently, 22 fans of pop icon Prince (a.k.a. the artist formerly known as "The Artist Formerly Known as Prince") were served notice that they were being sued for $1 million each. The allegation? According to the complaint, each of the defendants had committed multiple instances of copyright infringement by posting links to unlicensed copies of Prince's concerts. Fortunately for these alleged bootleggers, the Purple One voluntarily dismissed his $22 million lawsuit a few days later, just as soon as the offending posts had been removed.

But these individuals may not want to "party like it's 1999" just yet, as Prince is free to refile his complaint at any time. And if these bloggers post any more unauthorized links, they may learn the hard way that intentionally infringing on a copyright can be a very costly mistake. For while statutory damages under 17 U.S.C. § 504 can be as little as $200 per work for *unintentional*infringements, damages can be as high as $150,000 per work if the infringements are *willful.* A case that illustrates this point is Capitol Records, Inc. v. Thomas-Rasset (2007).

In that case, the Recording Industry Association of America (RIAA) similarly complained they were the victim of multiple instances of copyright infringement. The RIAA alleged that Jammie Thomas-Rasset, a single-mother of four, had downloaded 24 unauthorized copies of songs from the now-defunct file-sharing service KaZaA. After she refused to settle with the RIAA for $3,500, the case went to trial, and Thomas-Rasset was found liable for willful infringement. The jury ordered Thomas-Rasset to pay $222,000 in statutory damages. That comes out to $9,250 per song from such performers as Gloria Estefan and Vanessa Williams. For that price, the defendant should have at least downloaded songs from the Beatles or Bruce Springsteen.

Ironically, when the case was re-tried in 2009, the new jury actually *increased* the award, and Thomas-Rasset was ordered to pay $1.92 million in statutory damages — that's $80,000 per song! Gloria Estefan would have probably come to the defendant's home and given a private concert for that amount of money! In the end, the award was reduced back to the original $222,000, but only after many months of subsequent litigation. Thomas-Rasset appealed her case all the way to the Supreme Court, arguing that the damages were a violation of due process under State Farm v. Campbell and BMW v. Gore, but certiorari was denied on March 18, 2013.

While the fairness of the award in the Thomas-Rasset case is certainly subject to debate, the enforcement of copyright laws is inarguably vital to the well-being of society. In the digital age, creative talents — songwriters, artists and others — face a big challenge when it comes to monetizing their work, so any income derived from their creations must be protected. This protection comes from copyright laws, which provide a shield for creators by giving them a limited monopoly to decide how, when, where and by whom their work — their property — is to be used.

Section 203 of the Copyright Act of 1976 is an example of the protection that copyright laws afford to creative artists. This provision allows the author of a work (or their survivor) to unilaterally cancel the underlying grant of a transfer or license of a copyright, provided certain conditions are met, including:

- The grant must have been executed on or after January 1, 1978.
- The grant cannot be part of a will.
- The creation cannot be a "work made for hire."
- At least 35 years must have passed since the execution of the grant.
- Due notice must be served 2-10 years before the date the grant will be terminated.

The purpose of this section of the Copyright Act is to protect authors who may have lost the rights to their own work when they entered into unfair contracts, perhaps when they were new to the business and had little negotiating leverage.

One of the first well-known artists to exercise this right to terminate a grant under Section 203 was Victor Willis. Willis was the singer and songwriter who dressed up as a policeman in the Village People. On September 13, 2013, Willis successfully recaptured his ownership interest in two songs that he co-wrote: "Y.M.C.A.," released in 1978, and "In the Navy," released in 1979, from Scorpio Music and Can't Stop Productions. Now, more and more authors are filing notices of termination, including Bob Dylan, Billy Joel and the Eagles — not to mention thousands of lesser-known artists.

This turn of events represents a paradigm shift in copyright law. Recording and publishing companies must now either renegotiate contracts — this time on a much more level playing field — or they must be willing to fight hundreds, or even thousands, of lawsuits. Of course, these legal battles will be in addition to the increasingly difficult war the entertainment industry is already waging to prevent the unauthorized dissemination of its copyrighted materials online.

In part two of this article, WHGC will examine how industry leaders will likely respond in

the face of this dilemma.

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