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Greek collecting societies are not entitled to collect equitable remuneration for artists and producers not represented by them by contract or mandate

A & K Metaxopoulos & Partners Law Firm | Intellectual Property - Greece

KRITON METAXOPOULOS

IRINI DAROUSSOU

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Introduction

GEA is the Common Collecting Society of GRAMMO (Collecting Society of Music Producers), ERATO (collecting Society of Performers) and APOLLON (Collecting Society of Musicians). It was formed following a state license, in order to collect, among other things, the equitable remuneration provided by article 49 of Law 2121/93 in favour of producers, performers and musicians for the public performance of legitimately released sound carriers.

Since its establishment, GEA has claimed being entitled to collect the above equitable remuneration not only for its members (ie, rights holders represented by it) but also on behalf of producers, performers and musicians who are not represented by it on the basis of a contract or relevant mandate.

The providers of so-called "royalty tree" music (ie, music whose producers, performers and musicians are not represented or linked to a collective management organisation (CMO)) have strongly opposed to this claim and continued to directly license their music to shops for in-store background music providing a contractual guarantee to their customers (retail shops) that they would not be obliged to pay the article 49 remuneration to GEA or any other CMO.

The matter was brought in the past before the Greek Copyright Organisation (OPI) and the parties following negotiations found a temporary and partial solution. As a result, the royalty free music providers licensed GEA (through GRAMMO) to collect on their behalf the equitable remuneration of article 49 in relation only to television and radio broadcasts. The direct licensing of in-store music was not covered by the agreement.

Recently, GEA has decided to reactivate its claim over article 49 remuneration claiming, stating that it is entitled to collect it not only for its members and represented rights holders but also on behalf of those who are not its members or represented by it on the basis of a contract or mandate.

GEA has filed proceedings against Dixons on this basis and Dixons, making use of a contractual guarantee in their agreement with their provider of royalty free music, has summoned the company Play Music (PM) to intervene in these proceedings in its favour.

Facts

PM provides image content and background music management services for shops and professional spaces. From 1 May 2014 onwards, PM has cooperated with the company Navarr Enterprises Inc, based in Florida, United States. Through the online platforms Audiosparx and Radiosparx, Navarr Enterprises has provided PM with programmes from its own repertoire of musical works.

In a private agreement dated 1 April 2011, PM agreed to grant Dixon's, a retail chain, a licence to use and perform a specific musical repertoire in its shops, including works of Navarr Enterprises. According to PM, the specific musical repertoire in question was not represented by any collective management organisation (CMO) in Greece or abroad and, therefore, no copyrights, related rights, performance rights or any other rights of third parties were owed.

On 15 June 2020, GEA, a Greek CMO (representing artists and producers) applied to the First-Instance Court of Athens, arguing that the presumption of legitimisation (ie, representative power) provided in its favour by article 7 of Law 448/2017 introduced an extended copyright licence (as opposed to a simple mandatory collective management licence). GEA argued that this gave it the right to collect equitable remuneration for the broadcast of the works under article 49 of the Greek Copyright Law.

Decision

The Court held that the characteristic attribute of the musical repertoire in question was that the rights holders of the related/neighbouring rights had not assigned the collection of their claims relating to the equitable remuneration for public broadcasts in Dixon's shops to any CMO, or in general to any such organisation in their country of residence.

This was evidenced by:

- a letter dated 28 July 2021 from the vice president of Navarr Enterprises;
- an affidavit dated 12 November 2021 of the president of Navarr Enterprises; and
- an affidavit dated 21 September 2021 of a former employee of PM.

The affidavit of PM's former employer contained a detailed list of musical works that:

- had been used by PM in its musical repertoire;

- were unrelated to the musical works listed in GEA's injunction application; and
- did not belong to the so-called "commercial" repertoire of the Greek or international music scene (which is indeed primarily represented by GEA).

The Court recognised that Navarr Enterprises had signed a contract of assignment with a CMO called Grammo – a member of GEA – on 29 January 2019. However, the Court held that while Grammo was entitled to collect renumeration for related rights regarding radio and TV broadcasting of the Navarr Enterprises/PM repertoire, it was not entitled to collect renumeration for their use as background music in shops – this remained Navarr Enterprise's right.

The Court pointed out that PM and Navarr Enterprises had cooperated on the transfer of digital phonograms to Grammo to facilitate the identification of their musical works during television and radio transmissions. The Court held that this constituted a form of recognition by GEA of the fact that Navarr Enterprises, and therefore PM as well, had the right to conclude contracts for the management of related rights for specific works that were included in their catalogue and transmitted in commercial shops.

Furthermore, it could not be established that any of the musical works listed in GEA's application, other than the PM/Navarr works, had been transmitted in Dixon's stores. Indeed, the applicant's witness did not confirm this before the Court.

As a result of the above, the Court rejected GEA's application as factually unfounded and ordered GEA to pay the defendants their legal costs under article 176 of the Code of Civil Procedure.

Comment

This is an extremely important decision. The Court rightly held that the presumption of the law is rebuttable and that, as a result, Greek CMOs are not entitled to collect the equitable remuneration on behalf of rights holders that are not represented by them – they are only allowed to do so when such rights holders have specifically assigned their rights to the CMO.

For further information on this topic please contact Kriton Metaxopoulos or Irini Daroussou at A & K Metaxopoulos & Partners Law Firm by telephone (+30 210 725 7614) or email (k.metaxopoulos@metaxopouloslaw.gr or idaroussou@metaxopouloslaw.gr). The A & K Metaxopoulos & Partners Law Firm website can be accessed at www.metaxopouloslaw.gr.