Proskauer

Digital Music Provider Grooveshark Dismantled in Major Victory for Music Recording Industry

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On April 30, 2015, digital music provider Grooveshark—owned by Escape Media Group, Inc. ("Escape")—agreed to permanently shut down its controversial music streaming website following several years of litigation with major record labels and companies, including Universal Music Group, Sony Music Entertainment, and Warner Bros. Records.

The move by Grooveshark, announced on the eve of a trial in which Escape faced potential liability for up to $736 million in damages, is part of a settlement that also requires the company to pay the record industry plaintiffs $50 million, inclusive of fees and costs.

The Lawsuit

On November 18, 2011, nine music labels and record companies ("Record Companies") [1] filed suit against Escape in the Southern District of New York for willful copyright infringement. Launched in 2006, Escape's ad-based streaming service Grooveshark enabled users—which numbered 35 million at the website's peak—to upload and stream digital audio files free of charge.

On summary judgment, the Record Companies argued that Grooveshark, through its employees, indisputably had uploaded (and thus copied) 4,907 separate sound recordings to Grooveshark's database of available works without obtaining (or even seeking) proper licenses or other authorization.

On September 29, 2014, Judge Thomas P. Griesa granted the Record Companies' motion for summary judgment, finding Escape liable for direct and secondary copyright infringement. Significantly, the district court concluded that "by overtly instructing its employees to upload as many files as possible to Grooveshark as a condition of their employment, Escape engaged in purposeful conduct with a manifest intent to foster copyright infringement via the Grooveshark service." In other words, Escape's actions constituted willful copyright infringement, which, as discussed below, carries with it the possibility of enhanced damages.

Escape Faces $736 Million in Damages

With a jury trial on damages set to begin April 27, 2015 (and later adjourned to May 4, 2015), the Record Companies elected to pursue statutory rather than actual damages.[2]

Under U.S. copyright law, statutory damages may range from $350 to $30,000 (17 U.S.C. § 504(c)(1)). However, in the case of willful infringement, the range dramatically increases to a possible maximum of $150,000 per infringed work (17 U.S.C. § 504(c)(2)).

With a total of 4,907 infringed sound recordings at issue, Escape faced liability for a potential $736 million in damages.

The Settlement and Apology

Rather than endure trial and risk a nine-figure loss, Escape relented and agreed to settle the case on terms heavily favorable to the Record Companies, including a $50 million payout. The May 1, 2015 consent to judgment and other publicly available information reveals the following concerning the settlement terms:

- Escape must permanently shut down Grooveshark;
- Escape must issue a lengthy apology to the music industry;
- Escape must wipe clean its repertoire of copyrighted recordings and "hand over" (presumably meaning forfeiture of) ownership of the Grooveshark website, mobile applications and intellectual property;
- Escape must pay $50 million to the record companies; and
- Escape must pay $75 million for any violation of the settlement.

The Lawsuit

Grooveshark issued its apology late in the afternoon on April 30.[3] After noting its good intentions for the website, Grooveshark founders admitted that the company "made very serious mistakes. We failed to secure licenses from rights holders for the vast amount of music on the service. That was wrong. We apologize. Without reservation."

In addition, the apology urged former users—as well as anyone who "love[s] music and respect[s] the artists, songwriters and everyone else who makes great music possible"—to obtain subscriptions from such legal music service providers as Spotify and Google Play.

The settlement represents a major victory for the Record Companies and the music industry as a whole and, as stated by the Recording Industry Association of America, "ends a major source of infringing activity."

[1] The following were named plaintiffs in the lawsuit: UMG Recording, Inc.; Sony Music Entertainment; Warner Bros. Records Inc.; Zomba Recording LLC; Elektra Entertainment Group Inc.; Arista Records LLC; LeFace Records, LLC; Arista Music; and Atlantic Recording Corporation.

[2] The Copyright Act, 17 U.S.C. § 504(c)(1), allows a plaintiff to elect recovery of statutory damages "instead of actual damages and profits."

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