

Play that Funky Music... or Can You? An Update on Issues in Music Licensing

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The business of music licensing continues to be a difficult area in the UAE and, generally, across the gulf region. European collective rights' management agencies are once again writing letters to various users of music, claiming their rights. On that basis, we felt that it was timely to address this issue so that everyone fully comprehends the rights' position.

Firstly, despite claims that we read, from time to time, on social media posts, the UAE Copyright Act recognises various rights relating to music, including the much discussed issue of the public performance rights, as part of the rights granted to Authors under Article 7.

“Only the author and his successor or the copyright holder may authorise the exploitation of the work of art, in any manner whatsoever, namely by way of copying including downloading, electronic saving, any drama performance, radio broadcast transmission and re-transmission, public performance or communication, translation, rearrangement, amendment, renting out, borrowing, or publication in any manner including presentation via computers or information or communication networks or any other medium.”

These rights are similar in the various GCC countries.

Internationally, when it comes to broadcasting or any public performance of music (such as in restaurants or hotel lobbies), the practice of licensing is done by way of 'collective rights' management'. This is the process by which the user of the music engages with a copyright collection society to obtain a blanket licence to allow them to legally use the music in their businesses.

In many jurisdictions, the copyright collection societies typically enter into relationships with the creators/owners of the music whereby the public performance rights are exclusively licensed to the copyright collection society. They then have the exclusive rights to globally licence the public performance rights in the music. Notably, they also work with other copyright collection societies across the globe in order to collect money on behalf of their national members. Therefore, if a restaurant in Paris plays music from a Brazilian composer, that composer should receive a fee.

At this moment in time, there are no copyright collection societies operating in the GCC region. This is for a number of reasons, and can be traced back to the operation of the Copyright Acts in each country. Some territories require them to be licensed (UAE, Oman, Bahrain). Kuwait does contemplate the existence of copyright collection societies, but with no clear guidance. The KSA does not mention them in its Copyright Act, neither by way of allowing or prohibiting them, and neither does Qatar.

From an UAE perspective, the government has yet to license any entity to undertake the activity of a copyright collection society. This includes activities undertaken by foreign copyright collection societies which nonetheless continue to send demand letters to UAE businesses from other countries, seeking licence fees. They do not have the right to do this.

So, what does this all mean in practical terms?

- even if a company WANTS to license music within its business, it is going to find it difficult to do so. Large entities have the ability to consult lawyers for advice, but smaller businesses continue to use music without a licence;
- anyone wanting to negotiate any rights is at the mercy of the commercial operators – the record companies and publishers that control the rights in this region – because there is no established rate card for payment for the licences. In other countries, the rate card gives businesses absolute certainty as to money that needs to be set aside for music licensing;
- foreign companies will continue to write unpleasant demand letters to local companies despite not having the government mandate to operate in the country;
- UAE and GCC talent are not represented overseas. If Emirati music is played on a radio station in New York, there is no copyright collection society here to receive the money that is generated from the public performance; and
- large scale events cannot provide third parties (such as performers or exhibitors) with a platform for public performances that are free of potential infringement. They often are left without the ability to license the public performance rights at all because of the complexity of the global law and practice in that area.

As an industry, both users and owners of music will be best served by the introduction of certainty as soon as possible.

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