

Court Finds Copyright DJ Action against Music Rights Holder Slightly Out of Tune

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by J. Michael Keyes



Does a demand letter from a music rights holder that alleges “millions of instances of infringement” create a case in controversy with the recipient? You may be inclined to answer with an emphatic “of

course!” But think again, or so says a recent ruling by the U.S. District Court for the Southern District of New York in Windstream Services LLC v. BMG Rights Management LLC et al. If you are rushing off to the federal courthouse to get that declaratory judgment action on file, you should read on first to make sure your DJ complaint hits all the right notes.

This case represents a familiar theme and variation: music copyright holder vs. ISP. (We previously blogged about a similar dispute where an ISP was hit with a \$25 million jury verdict). In this number, BMG owns scores of musical compositions and Windstream provides internet access to scores of subscribers. On April 1, 2016, BMG sent a demand letter to Windstream alleging “ongoing infringement” by Windstream’s subscribers. While the demand letter did not cite to specific copyrights or specific acts of infringement, BMG did allege it has “identified millions of instances of infringement involving thousands of BMG copyrighted works using the Windstream network.” Windstream did not take this letter as a mere April Fool’s Day prank. Far from it. Windstream filed a declaratory judgment action. The music stopped for Windstream when the Court ruled this week there was no “case of actual controversy” between the parties. The Court also made it clear there would be no encore in the form of an amended DJ complaint because the clerk was ordered to “close the case.”

Why did the Court find this DJ action so hopelessly out of tune? The key is in the factual allegations and the scope of the relief requested by the Plaintiff. As the Court observed, the complaint did not reference “any specific copyright held by BMG” nor did it reference “any specific act of direct infringement by any Windstream subscriber.” Instead,

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Windstream sought a “blanket approval of its business model” by asking for a judicial declaration that it was a “mere conduit for the transmission of Internet services.” Due to the lack of specifics on any copyright or act of infringement, the Court concluded the complaint was simply seeking an “advisory opinion that apprises Windstream as to whether or how it should respond to Defendants’ notices and whether Windstream qualifies for DMCA’s safe harbor provisions.”

If you are representing a DJ copyright plaintiff, make sure your complaint contains allegations regarding the specific work of authorship at issue and the specific act of infringement of which your client is accused. Also, you should carefully consider what relief you are seeking. Are you asking for judicial approval of your client’s business model in general, or for specific relief with respect to a specific act of alleged infringement? It better be the latter if you want your client to sing your praises. Otherwise, you may be facing some unpleasant music.