

COMMENT

IP law is killing the online radio star

Music industry heavyweights are targeting global radio platforms as the law plays catch-up with technology



Steven Farmer

“I heard you on my wireless back in '52” goes the first line of Video Killed the Radio Star by the Buggles. More than 40 years since its release, much has changed in the way that radio is consumed, and it is fair to assume that when the London new wave band sat down to pen their famous hit, they did not contemplate online radio services providing access to thousands of music stations from around the world.

Twenty years since the landmark Napster case, in which the US courts held the peer-to-peer file-sharing service liable for contributory copyright infringement in a claim brought by several music industry heavyweights, the UK’s Court of Appeal has produced the latest instalment in the ongoing punch-up between the music industry and intellectual property rights in one corner, and online platforms asserting a right to freedom of expression in the other.

In the recent case of TuneIn Inc v Warner Music and Sony Music Entertainment, the court largely upheld an earlier High Court

ruling that TuneIn — the operator of a global online radio service — was liable for copyright infringement for broadcasting non-UK radio stations in the UK.

TuneIn’s arguments that it was a search engine simply linking UK listeners to a radio station’s own stream, not communicating any music to the public and, therefore, not taking part in a licensable activity, were rejected.

In particular, the music companies who brought the case successfully argued that TuneIn required a licence where it included within its service radio stations that play music but are not licensed for reception in the UK.

The case has significant ramifications, confirming that websites, apps and other intermediaries seeking to connect UK listeners to non-UK radio stations will require a licence from the music industry’s collecting societies, to cover listening in the UK.

This is no small development. Foreign radio stations are also caught in the

crosshairs — if they find themselves unwittingly hyperlinked on a website or app that targets the UK, they could find themselves liable for copyright infringement through arguably no fault of their own.

The unfortunate fallout of this case, at least for UK consumers of online radio, is that we may now see a greater use of cease-and-desist letters and geo-blocking of the UK market.

While it remains to be seen if TuneIn will appeal to the Supreme Court, this latest saga is a reminder that until radio licensing regimes are updated to reflect the global nature of music consumption, those looking to leverage technology to communicate third-party content in this way will very likely continue to be challenged by rights holders, effectively killing off the next “radio star” as prophesised by the Buggles all those years ago.

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