



**QORTI CIVILI PRIM' AWLA**

**ONOR. IMHALLEF MARK CHETCUTI LL.D.**

**Illum l-Erbgha, 14 ta' Frar, 2018**

Numru 2

**Rikors Guramentat Nru. 45/2012**

**The Performing Right Society Limited, ta' Londra l-Ingilterra,  
rapprezentata lokalment mill-agent taghha  
Dingli Co. International Limited**

**vs**

**One Productions Limited**

**Il-Qorti,**

Rat ir-rikors guramentat tas-socjeta attrici tas-16 ta' Jannar, 2012 li jghid hekk:

1. Illi s-socjeta rikorrenti hija debitament awtorizzata mill-Bord dwar id-Drittijiet tal-Awtur, ai termini tar-regolamenti tal-2004 dwar il-Kontroll tat-Twaqqif u l-Operazzjoni tas-Socjetajiet ghall-Amministrazzjoni Kollektiva tad-Drittijiet tal-Awtur (Avviz Legali 425/2003) sabiex tagixxi f'Malta bhala "collecting society" (kif jirrizulta mill-estratt tal-Gazzetta tal-Gvern hawn annessa u markata Dok. PRS1).

2. Illi s-socjeta intimata, sew permezz tal-istazzjon tar-radju taghha li jgib l-isem "One Radio" u li kien igib l-isem "Super One Radio", liema stazzjon jittrasmetti terrestrialment minn Malta fuq il-frekwenza lilha allokata 92.7 Mhz FM, kif ukoll permezz tal-istazzjon tat-televizjoni taghha li jgib l-isem "One", liema stazzjon jittrasmetti wkoll terrestrialment minn Malta fuq UHF Channel 43 xandret f'Malta, fil-kas tal-istazzjon tar-radju fuq imsemmi sa mill-23 ta' Settembru, 1998 (f'liema data giet ipprezentata c-citazzjoni precedenti ghat-trasgressjoni tad-drittijiet tal-awtur illi ggib in-numru ta' citazzjoni 1870/1998/GC) u fil-kas tal-istazzjon tat-televizjoni fuq imsemmi sa mill-25 ta' Frar, 1994 (id-data illi fiha l-istazzjoni televiziv de quo beda jxandar) u ghadha qeghda xxandar f'Malta, diversi xoghlijiet muzikali tutelati ossija "copyright" u debitament ikkontrollati mis-socjeta attrici, fir-rigward ta' liema xoghlijiet

I-istess socjeta rikorrenti tgawdi l-kontroll esklussiv tal-att tax-xandir f'Malta skond il-Ligi.

3. Illi ghal fuq imsemmi xandir is-socjeta intimata ma kenitx applikat ghal, u wisq anqas ottjeniet, il-licenza relattiva minn ghand is-socjeta rikorrenti, sew in kwantu detentrici tad-drittijiet tal-awtur kif ukoll in kwantu "collecting society" awtorizzata kif fuq premiss, skond kif kien mehtieg li taghmel a tenur tad-disposizzjonijiet tal-artikolu 42(1)(a) tal-Att dwar id-Drittijiet tal-Awtur (Kapitlu 415).

4. Illi b'hekk is-socjeta intimata giet illi ttrasgredixxiet u ikkontravjeniet u ghadha qeghda tittrasgredixxi u tikkontravjeni d-drittijiet tal-awtur fix-xoghlijiet muzikali vestiti fl-istess socjeta attrici.

5. Illi s-socjeta intimata qeghda ripetutament, kontinwament u persistentement tittrasgredixxi u tikkontravjeni d-drittijiet tal-awtur vestiti fis-socjeta rikorrenti, u dana minkejja d-diversi sentenzi gja moghtija minn din l-istess Onorabli Qorti, kopja legali ta' liema huma hawn annessi u markati Dok. PRS2(a) u Dok. PRS2(b).

6. Illi b'konsegwenza ta' din it-trasgressjoni u kontravvenzjoni flagranti u sfiqa da parti tas-socjeta intimata tad-drittijiet tal-awtur fix-xoghlijiet muzikali vestiti fis-socjeta rikorrenti, sofriet danni konsiderevoli senjatament in-nuqqas tal-hlas tar-"royalties" lilha dovuti skond it-tariff taghha vigenti (Dok. PRS3) waqt il-perjodu kollu ta' trasgressjoni, kif dawn l-istess tariffi huma wkoll debitament ufficjalment approvati mill-imsemmi Bord dwar id-Drittijiet tal-Awtur.

7. Illi nonostante s-socjeta intimata giet interpellata diversi drabi, anke gudizzjarjament, sabiex tottempora ruhha mal-ligi, billi tapplika ghal u tottjeni l-hrug tal-licenzja relattiva, l-istess socjeta intimata baqghet ghal kollox inadempjenti u sahsitra wkoll esponiet ruhha ghal disprezz lejn l-awtorita ta' din l-istess Onorabli Qorti fir-rigward ta' liema disprezz qieghed jigi mitlub kontestwalment illi jittiehdu l-proceduri opportuni skond il-ligi.

Ghaldaqstant, in vista tas-suespost, is-socjeta rikorrenti titlob umilment lil din l-Onorabli Qorti joghghobha:-

1. Tiddikjara u tiddeciedi illi s-socjeta intimata ittrasgredixxiet u ikkontravjeniet id-drittijiet tal-awtur fix-xoghlijiet muzikali vestiti fis-socjeta rikorrenti billi sew permezz tal-istazzjon tar-radju taghha li jgib l-isem "One Radio" u li kien igib l-isem "Super One Radio", liema stazzjon jittrasmetti terrestrijalment minn Malta fuq il-frekwenza lilha allokata 92.7 Mhz FM, kif ukoll permezz tal-istazzjon tat-televizjoni taghha li jgib l-isem "One", liema stazzjon jittrasmetti wkoll terrestrijalment minn Malta fuq UHF Channel 43, xandret f'Malta, fil-kas tal-istazzjon tar-radju fuq imsemmi sa sa mill-23 ta' Settembru, 1998 (f'liema data giet ipprezentata c-citazzjoni precedenti ghat-trasgressjoni tad-drittijiet tal-awtur ili ggib in-numru ta' citazzjoni 1870/1998/GC) u fil-kas tal-istazzjon tat-televizjoni fuq imsemmi sa mill-25 ta' Frar, 1994 (id-data illi fiha l-istazzjoni televiziv de quo beda jxandar) u ghadha qeghda xxandar f'Malta, diversi xoghlijiet muzikali tutelati ossija "copyright" u debitament ikkontrollati mis-socjeta attrici, fir-rigward ta' liema xoghlijiet l-istess socjeta rikorrenti tgawdi l-kontroll esklussiv tal-att tax-xandir f'Malta skond il-ligi;

2. Tillikwida d-danni sofferti mis-socjeta rikorrenti. bhala konsegwenza ta' din it-trasgressjoni u kontravvenzjoni da parti tas-socjeta intimata fir-rigward tad-drittijiet tal-awtur fix-xoghlijiet muzikali vestiti fis-socjeta rikorrenti;

3. Tiffissa dawk id-danni addizzjonali illi l-kaz de quo gustament jehtieg u dan in vista tac-cirkostanzi kollha inkluzo partikolarment il-flagranza tal-kontravvenzjoni u kif ukoll kull beneficju li mar favur is-socjeta intimata in vista tat-trasgressjoni u kontravvenzjoni u dan kif inhuwa stipulat fl-artikolu 43(2) tal-Kapitlu 415 tal-Ligijiet ta' Malta;

4. Tikkundanna lis-socjeta intimata sabiex thallas lis-socjeta rikorrenti kemm dik is-somma illi tigi hekk likwidata in linea ta' danni sofferti mis-socjeta rikorrenti bhala konsegwenza tat-trasgressjoni da parti tas-socjeta intimata tad-drittijiet tal-awtur fix-xoghlijiet muzikali vestiti fis-socjeta rikorrenti ai termini tat-tieni talba; u

5. Tikkundanna lis-socjeta intimata sabiex thallas ukoll lis-socjeta rikorrenti dik is-somma rapprezentanti d-danni addizzjonali illi din l-Onorabbli Qorti joghgobha taghti ai termini tat-tielet talba;

6. Tinibixxi lis-socjeta intimata milli xxandar f'Malta dawn ix-xoghlijiet muzikali kollha tutelati ossija "copyright" u ikkontrollati mis-socjeta rikorrenti, sew permezz tal-fuq imsemmi stazzjon tar-radju kif ukoll permezz tal-fuq imsemmi stazzjon televiziv u dana sakemm ma tkunx applikat ghal u ottjeniet il-hrug tal-licenzja relattiva minn ghand is-socjeta rikorrenti u dana a bazi u ghall-finijiet tad-disposizzjonijiet ta', kemm tal-Att dwar id-Drittijiet tal-Awtur (Kap. 415) kif ukoll tal-Att li Jirregola l-Infurza ta' Drittijiet ta' Proprjeta Intelletwali (Kap. 488) taht il-pieni komminati mil-ligi ghall-hatjin ta' disprezz lejn l-Awtorita tal-Qorti ghal kull eventwali infrazzjoni tal-ordni li tigi moghtija fuq din id-domanda.

Bl-ispejjez komprizi dawk tal-protest gudizzjarju datat 14 ta' Dicembru, 2008 (kopja ta' liema hija hawn annessa u markata Dok. PRS4) kif ukoll tal-ittra ufficjali datata 15 ta' Lulju, 2008 kontra s-socjeta intimata u l-ufficjali taghha illi minn issa huma ingunti sabiex jidhru ghas-subizzjoni.

Rat ir-risposta guramentata tas-socjeta konvenuta li tghid hekk:

1. Preliminarjament it-talbiet attrici huma preskritti ai termini tal-artikolu 2153 u 2156(f) tal-Kodici Civili.

2. Preliminarjament ukoll l-atturi ghandhom jindikaw car liema drittijiet tal-awtur qeghdin jaghmlu riferenza ghalihom fil-kawza taghhom. Huma ghandhom ukoll jaghtu prova skond il-ligi li effettivament jiddetjenu dawn id-drittijiet tal-awtur.

3. L-attur nomine ghandu wkoll jipproduci kopji awtentici tad-deeds of assignment tad-drittijiet tal-awtur li jiddetjenu u dwarhom qed jippretendu d-danni, kif ukoll prova lic-cessjonanti setghu jiddisponu mill-jedd in kwistjoni.

4. Illi fil-meritu t-talbiet attrici huma infondati fil-fatt u fid-dritt u ghalhekk ghandhom jigu michuda bl-ispejjez.

## 5. Salvi eccezzjonijiet ulterjuri.

Rat l-atti u n-noti ta' sottomissjonijiet prezentati;

Rat is-sentenza tal-Qorti tal-Appell tas-27 ta' Mejju 2015 li ikkonfermat is-sentenza in parte ta' din il-Qorti tal-5 ta' Gunju 2014. Il-Qorti iddecidiet li t-talbiet tas-socjeta attrici kienu preskritti hlief ghal perjodu wara 16 ta' Jannar 2010.

Rat li l-kawza thalliet ghas-sentenza.

## Ikkunsidrat

### Provi

Charmaine Briffa xehdet li hija Manager mas-socjeta Dingli Co. Int. Ltd li hi l-agent f'Malta tas-socjeta attrici. Din tirrapresenta lil kompozituri u l-awturi tal-muzika li huma membri taghha ghal dawk ix-xogholijiet muzikali illi dwarhom l-istess drittijiet tal-awtur ikunu gew assenjati lis-socjeta attrici. Il-PRS tavvicina l-istabbiliment li jaghmlu uzu mill muzika li jidhlu fir-repertorju taghha biex tirrilaxxjalhorn licenzja. F'kaz li xandar ma jiehux licenzja huma jigbru evidenza ta' trasgressjoni minnu tad-drittijiet tal-awtur biex jittiehdu proceduri legali kontra tieghu. Mas-socjeta konvenuta ma kienx intlahaq ftehim u nonostante dana, is-socjeta konvenuta baqghet ixandar xogholijiet tutelati mill-PRS. Kienet saret ittra ufficjali fil-15 ta' Lulju 2008, kif ukoll Protest Gudizzjarju prezentat fil-14 ta' Dicembru 2010 (Dok. PRS5 u PRS4 a fol. 66 u 63). Kien sar monitoring tat-trasgressjonijiet mis-stazzjon tar-Radio 'One Radio' u minn 'One TV' (Dok. CB1 u CB2 a fol. 86 u 89). Il-proceduri prezenti infethu fis-16 ta' Jannar 2012. Fl-istess data gie prezentat rikors fejn intalab li jittiehdu proceduri ghal disprezz billi l-konvenuti kisru l-inibizzjoni ordnata mill-Qorti fis-sentenza tal-10 ta' Gunju 2005. Kienu inghataw zewg sentenzi kontra l-konvenuti ghal trasgressjonijiet separate simili fuq proceduri istitwiti mis-socjeta attrici. (ara fol. 40 u 52) Dawn il-kawzi jirrigwardaw trasgressjonijiet precedenti ghal mertu tal-kawza odjerna.

It-Tariffa applikabbili hija dik immarkata BC fid-Dok. PRS3 (a fol. 60). Fil-kaz ta' radju kummercjali t-tariffa tvarja bejn 3% u 5% tad-dhul nett mix-xandir, mentri fil-kaz tat-televizjoni kummercjali r-rata hija 2% tad-dhul totali mix-xandir, ai termini tal-

paragrafu 8 Definizzjoni tat-Tariffa. Tikkonferma li kemm ilhom ixandru l-konvenuti huma qatt ma hallsu drittijiet tal-awtur lill-PRS.

Thaddeus Scerri, in rappresentanza tas-socjeta RSM Malta, xehed li hu ghandhu l-accounts ta' One Radio minn 1999 sa 2001 u tal-kumpanija intimata minn 2005 sat 2010. Hu ghandu in-net advertising revenue tal-kumpanija li pero mhux maqsum bejn radio u television. Il-kumpanija jkollha attivitajiet ohra, bhal teleshopping. Hu pprezenta d-dokument TD1 (fol. 815) fejn hemm financial statement tar-revenue ta' One Productions Ltd izda ma jiddistingwiex bejn radio u television.

Michelle Bonello, Direttur fl-Ufficcju tad-Dipartiment tal-Kummerc, ipprezentat it-tariffi li gew pubblikati fil-Gazzetta tal-Gvern tal-2007 skont decizjoni tal-Copyright Board (Dok. MB1 fol. 774). Spjegat li l-ewwel jigu pubblikati t-tariffi ghal li jista' jkun hemm oggezzjoni ghat-tariffi, jinghataw 60 gurnata biex jilqghu l-oggezzjonijiet u jekk ma jkunx hemm, it-tariffi jigu accettati, imbaghad tinghata d-decizjoni u t-tariffi jigu pubblikati. Qalet li t-tariffi gew approvati. Ikkonfermat li s-socjeta PRS hija approvata bhala Collecting Society.

Dr Simon Manicolo, rappresentant tal-Broadcasting Authority, ipprezenta l-licenzja kumnercjali (Dok. SM1 a fol. 828) tal-kumpanija konvenuta. Dawn ghandhom licenzja valida mill-2011 sal-2016 ghal One TV. Qabel kellhom licenzja ukoll. Il-konvenuti kellhom licenzja mill-bidu nett cioe minn 1991 u tar-radio ffit qabel ghax kienu bdew bir-radio.

Michelle Agius Poretli xehdet li hija tahdem ma' kumpanija ta' accountants u tkun seconded mal-kumpanija intimata ghal jumejn fil-gimgha biex speci tiehu hsieb l-accounting. Hi pprezentat Dok. MAP1 sa MAP3. L-informazzjoni f'dan id-dokument tiddistingwi bejn qliegh minn TV u Radio u huwa dikjarat fil-financial statements tal-audited accounts 31st December 2010, 2011, 2012. Ipprezentat ukoll id-dokumenti MAP1 4-6 tal-2013, 2014 u 2015. L-ahhar accounts ghadhom mhumiex audited. Hija qasmet it-total income fil-kategorji differenti.

Fl-affidavit taghha ta' Jannar 2017 Karen Estelle Fishman qalet hekk:

I am a solicitor and provide legal services to PRS. I have given a detailed explanation about PRS and how it works in my previous affidavit. I had confirmed PRS ownership and control of the works concerned in Exhibits KEF 4 and KEF 5. By virtue of the assignments from its members PRS is entitled to administer the performing rights of their works. A list of these representation agreements currently in force is annexed in Dok. KEF6 [fol. 1016]. PRS has obtained evidence of unlicensed communications through monitoring reports by a service provider, BMAT, for One Radio since January 2014 and for One TV since April 2014 and continue to do so. BMAT supplied reports covering the years 2014, 2015 and up to October 2016 for One Radio and November 2016 for One TV. The recordings made by BMAT are contained in Doc. KEF7 (disk fol. 1021). BMAT recording data were compared with the works data held on PRS repertoire database. However as this was an extensive work, it was decided to re-run the BMAT recordings data by reference to a smaller subset of recording artists data held by PRS. When these were cross-checked it resulted that respondents made no fewer than 13,738 transmissions of recordings on their TV and Radio Stations. There may be one song which appears as one musical work but which is played on numerous occasions and therefore appears on multiple occasions in the BMAT report. PRS is entitled to collect royalties in respect of those works listed in Doc. KEF8. [fol. 1041] The list of PRS members is contained in Doc. KEF10. [fol. 1558]. PRS is duly authorised to collect royalties on behalf of its members in terms of the Laws of Malta, Copyright Law Chapter 415 and as approved by the Maltese Copyright Board.

Jacqueline Church fl-affidavit taghha pprezentat f'Jannar 2017 tghid hekk:

I am responsible for managing PRS's operations, managing and licensing the use of their members' music. PRS entered into a contract with BMAT to be able to monitor through their company all music that is played on Maltese TV and radio stations. However, broadcasters still have the obligation to provide usage reports directly to PRS, if required. Through its software, BMAT tracks and logs all the music played. PRS have used BMAT system since 2014. Witness explained the number of steps PRS took in this process for the years 2014, 2015 and most of 2016 (see para. 4: Steps 1–5). This exercise was however made on a smaller data subset extracted from BMAT data as their data is very extensive. The exercise involved also manual look ups of their members' details. Screen shots of each registration from PRS's database for each of the 236 unique works were taken to show the name and details of the composers/authors. PRS has a tariff specifically for broadcasters in Malta. The 2006 version of the tariff has been approved by the Copyright Board and has been used for the calculation of the fees in the present proceedings. The tariff applies to both TV and radio and is based on a percentage of the revenue. For radio, this is a percentage of Net Broadcasting Revenue (**NBR** is as per Tariff is defined as *the gross advertising revenue after deduction of actual advertising agency commission, if any, subject to the proviso that the maximum deduction permitted shall be 15%*). As regards TV, a single percentage is applied to the Total Broadcast Revenue (**TBR** is defined as *the total amount of any revenue from any source which becomes payable to a Licensee under this Tariff in any given licence year, including, but not restricted to, revenue from advertising, donations, subscription, sponsorship, barter*

or contra deals, licence fees, government subvention and other grants). The calculations which were made are contained in Doc. JC1 [fol. 1011].

Figures supplied by One Production are as follows:

1999 to 2001: Figures are in Maltese Liri (Exchange rate of 2.33 for euro was used). No breakdown between Radio & TV revenue was provided.

2002-2004: No figures have been provided. An average between the 2001 and 2005 revenue has been used for all three years.

2005 -2009: Figures are in Maltese liri (exchange rate of 2.33 for euro was used). No breakdown between Radio & TV revenue was provided.

2010-2015: Figures were provided in euro. A breakdown of the total revenue was provided showing some radio income, some TV income and other general income with no indication of whether this applies to TV, Radio or both.

For the period prior to 2010 no information was given as to the split in income of TV & Radio. So a 75.25 split of the overall income has been used. The figures submitted by respondents confirm this ratio.

From 2010 to 2015 revenue from radio and TV was calculated as income from advertisements. See Doc. JC1.

For 2016 since no income figures are yet available from One Productions they have used the 2015 income figures as an estimate to calculate a fee due for 2016.

In order to calculate the licence fee for radio, 15% has been deducted as per tariff. The tariff of 3% has been applied to the radio Net Broadcasting Revenue for each year. The Tariff of 2% of Total Broadcasting Revenue with regard to the TV Licence.

The Total amount claimed is € 364,616 [see para. 18 of affidavit].

Fl-istatement tagħha tad- 9 ta' Gunju 2017 ix-xhud tghid:

The Net distributable revenue (NDR) is the aggregate amount available for distribution amongst the members and is arrived at after PRS has deducted its operating costs. In 2015 NDR was €469.6m and the cost to revenue ratio is 13%. PRS will apply the same deductions and distribution policy to the damages which will be collected from respondents in respect of its unlicensed broadcasts. She attached the PRS for Music Financial Review 2015, Articles 47-48 of PRS Articles of Association and Rule 2(b)(c) of PRS Rules.

## **Konsiderazzjonijiet tal-Qorti**

Illi f'din il-kawza s-socjeta attrici qed titlob hlas ta' danni wara li, skont hi, is-socjeta konvenuta qed iddoqq jew tippermetti li jindaqq muzika bi ksur tad-drittijiet tal-attur fix-xoghlijiet muzikali vestiti fis-socjeta attrici, u dan fuq l-istazzjonijiet tar-radju u tat-televizjoni taghha.

Is-socjeta attrici spjegat li hija tagixxi f'Malta bhala "collecting society" ai termini tar-regolamenti tat-2004 dwar il-Kontroll tat-Twaqqif u l-Operazzjoni tas-Socjetajiet ghall-Amministrazzjoni Kollettiva tad-Drittijiet tal-Awtur (Avviz Legali 425/2003) (ara estratt tal-Gazzetta tal-Gvern Dok. PRS1).

Is-socjeta konvenuta ma kinitx ottjeniet, il-licenza relattiva minn ghand is-socjeta attrici kif kien mehtieg li taghmel a tenur tad-disposizzjonijiet tal-artikolu 42(1)(a) tal-Att Dwar id-Drittijiet tal-Awtur (Kapitlu 415). Minhabba dan l-agir is-socjeta attrici sofriet danni konsiderevoli senjatament in-nuqqas tal-hlas *tar*-"royalties" lilha dovuti skond it-tariffi taghha vigenti tariffi ufficjalment approvati mill-imsemmi Bord dwar id-Drittijiet tal-Awtur.

L-ewwel eccezzjoni preliminari tas-socjeta konvenuta dwar il-preskrizzjoni kienet giet milqugha in parte relativament ghal perjodu qabel is-16 ta' Jannar 2010 b'sentenza taghha tal-5 ta' Gunju 2014 u kkonfermata mill-Qorti tal-Appell b'sentenza tas-27 ta' Marzu 2015.

Dwar l-eccezzjonijiet preliminari l-ohra tas-socjeta konvenuta ghandu jinghad li s-socjeta attrici ressqet provi fejn indikat liema drittijiet tal-awtur qeghda taghmel riferenza ghalihom fil-kawza taghha kif ukoll ressqet provi u dokumenti biex turi li effettivament tiddetjeni dawn id-drittijiet tal-awtur.

In oltre s-socjeta attrici pproduciet kopji awtentici tad-deeds of assignment tad-drittijiet tal-awtur li hija tiddetjeni [ara fol. PRS6, 7 u 8.] kif ukoll prova li c-cessjonanti setghu jiddisponu mill-jedd in kwistjoni [Dok. KEF8 u 10].

Ghalhekk fil-fehma tal-Qorti dawn l-eccezzjonijiet ghandhom jigu michuda stante li s-socjeta attrici sehnilha turi, b'dokumenti dettaljati u b'xhieda, li hija s-sid ta' d-



drittijiet tal-awtur dwar il-muzika li ndaqqet mill-istazzjon tar-radju u televizjoni tal-kumpannija konvenuta fiz-zmien indikat.

Fil-meritu, jigi relevat li s-socjeta konvenuta qed tecepixxi semplicement li t-talbiet attrici huma nfondati fil-fatt u fid-drii imma ma specifikatx kif u ghaliex it-talbiet attrici huma infondati.

Illi f'dan il-kaz is-socjeta attrici trid tipprova li hija ghandha l-jeddijiet ta' awtur (kemm originali jew inkella bhala cessjonarja taghhom) dwar ix-xoghol muzikali; li sar xandir jew trasmissjoni tax-xoghlijiet hekk imharsin u li l-parti mharrka ghamlet dan minghajr ma talbet jew inghatat licenza biex dak ix-xoghol jixxandar jew jigi trasmess.

Illi mill-provi prodotti jirrizulta li s-socjeta attrici tamministra, fl-interess tal-hafna membri taghha, d-drittijiet tal-awtur u dan jinkludi l-kontroll tax-xandir, permezz ta' stazzjonijiet tar-radju u televizjoni tal-istess xoghlijiet muzikali. Hu ovvju li mhux l-awturi tad-dinja kollha huma membri tas-socjeta attrici pero x-xoghlijiet tal-membri li s-socjeta attrici qed titlob id-drittijiet gew indikati f'dina l-kawza u dana lanqas ta' kollha billi n-numru huwa wiehed estensiv.

Effettivament dawn id-drittijiet tal-awtur huma regolati u tutelati hawn Malta permezz tal-Kapitolu 415 tal-Ligijiet ta' Malta. Ix-xoghol muzikali huwa wiehed mix-xoghlijiet li l-ligi taghraf bhala li jisthoqqlu l-ghoti dwaru ta' dritt tal-awtur [art. 42)(1)(a) tal-Kap. 415].

Is-socjeta attrici tallega li s-socjeta konvenuta xandret, permezz tal-istazzjoni tar-radju u televizjoni taghha xogholijiet muzikali gestiti u tutelati minnha minghajr ma ottjeniet il-licenzja necessarja biex jigu mxandra tali xoghlijiet muzikali. Is-socjeta attrici elenkat daww ix-xoghlijiet, li, fil-periodu in kwestjoni, xxandru minn fuq ir-radju u televizjoni tas-socjeta konvenuta u skond is-socjeta attrici n-nuqqaqs da parti tal-konvenuti li jhallsu l-imsemmija "royalties" jikkostiwixxi d-danni reklamati mill-istess socjeta attrici.

Jigi rilevat li ma giex kontestat mix-xhieda prodotti mis-socjeta konvenuta li in effett ixchandret dina l-muzika minn fuq l-istazzjonijiet in kwestjoni fiz-zmien indikat.

Is-socjeta konvenuta, permezz tal-provi minnha prodotti, bl-ebda mod ma kkontestat l-imsemmija lista ta' xoghlijiet musikali li giet esibita mis-socjeta attrici. Ix-xhieda prodotti mis-socjeta konvenuta illimitaw ruhhom li jipprezentaw dokumenti dwar il-breakdown tar-revenue tal-istazzjonijiet taghha.

Ghalhekk tirrizulta sufficjentement pruvata l-ewwel talba attrici

Illi l-kundizzjonijiet li jiddeterminaw il-hlas dovut lis-socjeta attrici bhala "royalties" jiddependi mit-turnover ta' kull sena tal-istazzjonijiet in kwistjoni.

Illi fir-rigward tal-licence fees li qed titlob is-socjeta attrici xehded Jacqueline Church li qalet li skond it-tariffa [Dok. PRS3 a fol. 60, 149] u l-breakdown tar-revenue ta' One Radio u One TV [ara Dok. JC1], il-licence fee li suppost tithallas mis-socjeta konvenuta tammonta ghall-€364,616 [ara f'dan is-sens it-table fil-para. 18 tal-affidavit taghha a fol. 1009].

Dawn l-ammonti jirrizultaw gustifikati stante li huma ibbazati fuq it-tariffa li hi applikabbli ghall-kaz in esami u liema tariffa giet ukoll approvata mill-Awtorita kompetenti. Inltre l-ammonti li gew applikati mis-socjeta attrici ghar-rigward tas-snin finanzarji indikati huma gustifikati. Giet applikata t-tariffa ta' 3% fuq ir-radju u 2% fuq it-televizjoni.

Fis-sentenza tat-30 ta' Novembru 2007 fil-kawza **Dingli Co. International Ltd noe vs Smash Communications Ltd** il-Qorti qalet hekk:

Is-socjeta` konvenuta, jekk ma taqbilx mat-tariffa tas-socjeta` attrici, setghet tirrikorri quddiem il-Bord dwar id-Drittijiet ta' l-Awtur sabiex titlob li tigi stabbilita t-tariffa xierqa skond il-ligi.

In oltre jekk kemm-il darba s-socjeta konvenuta dehrilha li ma kellhiex ghalfejn titlob li tinghata licenza, jew jekk dehrilha li c-cirkostanzij li fihom indaqget il-muzika ma

kinux jehtiegu licenza, is-socjeta konvenuta kien imessha hadet il-proceduri mehtiega quddiem il-Bord dwar id-Drittijiet tal-Awtur. Haga li ma ghamilitx.

Illi ghalkemm it-talba tas-socjeta attrici hija ghal perjodu minn 2010 sa 2016 [ara fol. 1009] f'dina l-kawza hija tista titlob biss danni ghal perjodu mis-16 Jannar 2010 sas-16 ta' Jannar 2012 id-data tal-prezentata tac-citazzjoni, b'riserva ghal danni ulterjuri li s-socjeta tista tirreklama 'l quddiem.

Ghalhekk abbazi ta' dak indikat a fol. 1009 l-ammonti li s-socjeta attrici tista titlob huma €53,227 ghas sena 2010 u €54,969 ghas-sena 2011. B'Kollox €108,196.

### **Decide**

Ghal dawn il-motivi, il-Qorti prevja li tichad l-eccezzjonijiet tas-socjeta konvenuta minn numru (2) sa (5); tilqa' l-ewwel talba attrici u tillikwida d-danni reklamati fl-ammont ta' €108,196; u tikkundanna lis-socjeta konvenuta thallas l-ammont hekk likwidat lis-socjeta attrici.

Tichad it-talba ghal hlas u likwidazzjoni ta' danni addizzjonali.

Tichad is-sitt talba billi din il-projbizzjoni taghmilha impossibbli ghas-socjeta konvenuta li xxandar, liema dritt gie moghti lilha mill-awtoritajiet kompetenti.

Bl-ispejjez kontra s-socjeta konvenuta.

Onor. Mark Chetcuti LL.D.

Imhallel

Anne Xuereb

Deputat Registratur