



I fought the law... From K-Pop to jazz legends, rock n' roll to World Music, Qatar Airways is accused of using PRS' members' repertoire without a music licence for its IFE service.

Sound judgement

Emma Kelly dials into the complexities of music licensing and finds some of the conversation stuck on repeat.

In-flight audio content licensing is once again in the spotlight, with the UK's PRS for Music (Performing Right Society) initiating court action against Qatar Airways over music copyright.

This isn't the first time that an airline or its content service provider (CSP) has been

involved in copyright cases involving in-flight audio and is unlikely to be the last. In fact, it could prove a landmark case that opens up the whole licensing can of worms.

In July 2020, the UK's High Court ruled that the PRS's copyright infringement case against Qatar Airways could be heard in the UK court system, even though Qatar is not a UK-based airline.

The PRS is seeking damages from Qatar Airways for allegedly using its members' music without having a relevant music licence. The PRS claims Qatar Airways has

never remunerated its members, songwriters, composers and music publishers for the use of their intellectual property. The PRS notes that, prior to COVID-19, the airline operated more than 200,000 flights per annum, with music being a major part of its extensive in-flight entertainment package, featuring up to 4,000 options.

The IFE sector has traditionally licensed music rights through a collection of licensing agreements with collective rights organisations like PRS on a territory-by-territory basis.

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Qatar Airways has “for decades evaded licensing the performing right in copyrights used in its in-flight services”, according to the PRS claim, with the airline’s home country of Qatar having no representative collective management organisation, such as the UK’s PRS. PRS says it initiated court action at the end of last year, having sought to license the airline through customary business channels without response.

Following the High Court’s ruling, the case will now proceed to trial on liability, unless the airline takes the necessary licence to cover the use of PRS’ repertoire, retrospectively and for the future.

THE GULF IN LICENSING

Qatar Airways is not the only guilty party, according to the PRS for Music claims, pointing to fellow Gulf carriers, but by size Qatar is one of the biggest offenders, it alleges. “Over the years, Gulf-based airlines have spent more than a billion pounds on various sports endorsements, yet refuse to remunerate our members for the use of their music on the airlines’ award-winning in-flight services,” says Sami Valkonen, Chief International and Legal Officer at the PRS, adding that the airlines’ action is a “long-standing injustice”.

Action against other Gulf carriers could follow. “We are determined to enforce our members’ legitimate rights with all offending airlines, which include among others Emirates and Etihad,” claims PRS. “While the Gulf region has the biggest offending airlines, we are also concerned about airlines operating from other countries where no properly functioning collections societies exist, such as in parts of Africa and South Asia,” it adds.

In fact, the PRS believes the Qatar case could “break the dam” and make other unlicensed carriers realise that they need to have their IFE

licensed. Qatar Airways failed to respond to questions from Inflight on the issue.

If successful, PRS v Qatar Airways could well be a landmark case, according to audio licensing expert Iain Kemplay from music rights consultancy Kemplay Consulting, which works with airlines and CSPs on music licensing issues. “If successful, then PRS will be well placed with legal precedent to take similar action against other non-UK-based airlines which also use its members’ music without a licence. And if it works for PRS, then it should similarly work for similar music rights organisations in other territories who also find their members’ rights are not currently licensed by airlines outside their territory,” he adds.

Action is only likely to be taken by music rights’ owners, however, if a significant amount of their members’ music is being used. “For major music rights owners, the new licence fees – and settlements for past

periods – would add up to the tens of millions of pounds collectively for currently unlicensed airlines, so taking effective action would be worthwhile,” he says.

There are currently “many other” airlines operating without the necessary legally required licences to use music onboard, “or at least, they do not have all the necessary licences,” according to Kemplay. Carriers in the Gulf region are not the only culprits, he says, pointing to “a number of other significant-sized airlines in other territories which are also operating without licences”. Carriers in the Middle East, however, are some of the largest and most successful in the world. “These airlines have been fully aware of this licensing issue for many years now and for various reasons and arguments have chosen to side-step taking out licences,” Kemplay claims.

While these airlines have allegedly failed to secure the necessary performing rights licences for their onboard content, there has been some progress in recent years in securing other music rights licences they need, either directly or through their CSP, according to Kemplay. “The glaring omission though remains in relation to the performing right on behalf of composers, authors and publishers,” he adds.

Licensing of in-flight audio content can be handled a number of ways, depending on the arrangement the airline has with its CSP, but

Have I the right? The jurisdictional judgement, the first stage in an important case for PRS members, was handed down by Mr Justice Birss of the High Court of Justice in London on 17 July 2020.



generally, the CSP takes responsibility for the mechanical, including reproduction rights for the content it supplies, while the airline handles the performing right for the onboard use. “Although recent years have seen CSPs increasingly cover performance rights portions as well,” says Sam Allen, Director of Licensing at CSP Stellar Entertainment. “Fundamentally, however, it is both the airline and CSP’s responsibility to ensure that all the necessary licences are in place,” he adds.

Sydney-based Stellar began life focusing on audio entertainment more than 40 years ago and now provides IFE content for airlines worldwide from its Sydney, Hong Kong, Kuala Lumpur, Singapore and Los Angeles bases. As well as meeting its own licensing requirements, Stellar offers expert advice to its airline clients and rightsholders. “We have acted as an intermediary in several circumstances to ensure a satisfactory and seamless outcome for all parties. Our aim is to offer our airline clients the best possible music selection for their needs while offering them surety with regards to their copyright obligations,” explains Allen.

The process has been simplified in recent years, according to Kemplay, with new licensing arrangements offered by major record labels including direct agreements with CSPs or airlines. This development followed high profile cases in 2013 and 2014 when Sony Music and Universal Music took

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action against a number of US airlines and their CSPs, including Inflight Productions (now part of Global Eagle Entertainment).

“There remains though a very real need for more work to be done by music rights owners and CSPs and airlines to generate simpler licensing solutions. Music rights are complicated to license and the way that CSPs produce and distribute content to airlines and then the increasingly varied ways in which music can be used onboard provide further complication,” he says. Kemplay predicts that unless the licensing process is changed, there will continue to be CSPs and airlines using music without all of the necessary licences and music rights owners – and thereby composers, authors, publishers, artists and labels – losing out on revenues.

The UK’s PRS does not believe complexity in the licensing process is an issue. “While there may be room for improvement, we

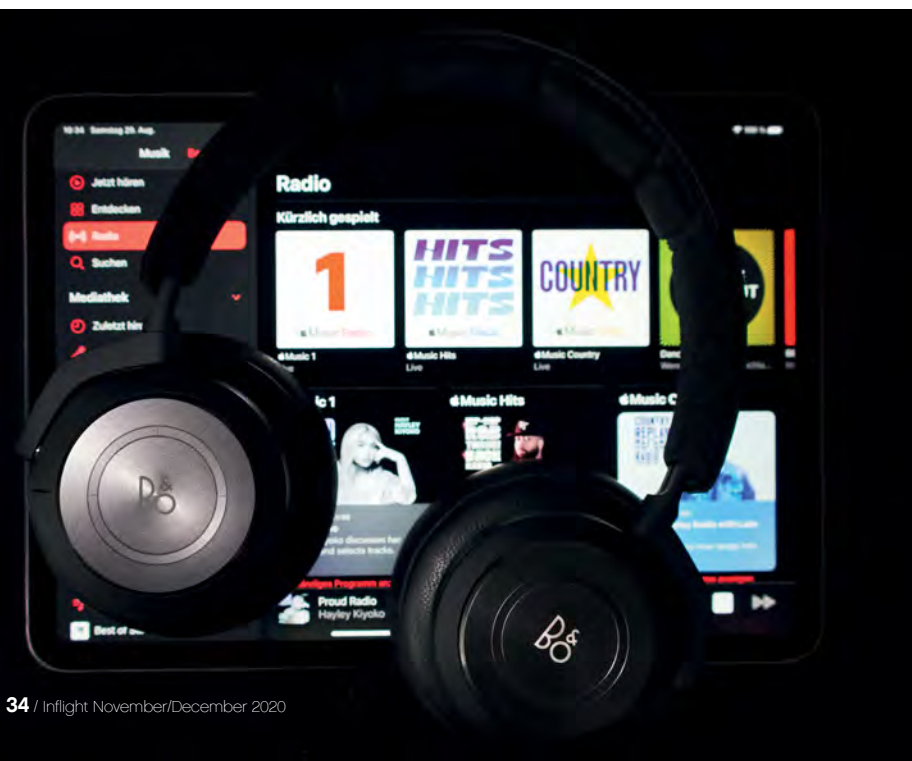
disagree with the premise that current licensing arrangements are overly complicated,” it says. “The vast majority of the world’s airlines are licensed by their local societies and the system has worked well for decades,” it adds. It does concede, however, that more could be done to improve the process. “More always needs to be done and we are working with our licensing partners to improve the transparency, accuracy and automation of the reporting and invoicing of our licensees,” it adds.

COMMUNICATION IS KEY

Direct agreements between CSPs and music companies are becoming more commonplace, but these agreements need to continually evolve, particularly as the use of in-flight audio changes, suggests Kemplay. “They will need to continue to develop, otherwise licensing gaps will occur and good communication is going to be key to this,” he adds. “If CSPs, airlines and music rights organisations communicated better about how the use of music is changing and how licences need to develop to cover these changes, then the licences produced might be more complicated, but the process would be simpler and the outcomes more satisfactory for all parties,” he believes.

Global Eagle Entertainment (GEE), for example, secured a global licensing agreement with Sony Music Entertainment in 2015. The deal was the first by Sony Music with an IFE CSP and provided GEE with access to music from Sony’s leading recording labels for use on airline IFE systems worldwide. Agreements with other music companies have followed. GEE, which at the time of writing had received US court approval to exit Chapter 11 bankruptcy through a sale to investors, declines to comment on any aspect of audio licensing or

Show you the way to go: Sydney-based Stellar provides IFE content for airlines worldwide as well as offering expert advice about copyright obligations to its airline clients and rightsholders.



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its agreements with music companies. GEE is not alone, however, with other CSPs including Spafax and Inflight Dublin also declining to comment.

Stellar's Allen believes there has been “huge progress” over the past five years in terms of simplifying the licensing process with the move from collection society blanket licences to direct rightsholder licence agreements. “However, it is still incredibly complex and there is still more to be done,” he adds. “There are lots of benefits for direct agreements between CSPs and music companies on behalf of airlines, particularly from a point of view of streamlining and simplifying the process, but for this to be a truly effective approach, it would need to be universally accepted by airlines, CSPs and rightsholders, and this is something very difficult to achieve,” he says.

SLATE OF INDEPENDENTS

Stellar has direct agreements with more than 100 music rightsholders, including independent and major record labels and distributors, as well as independent artists. “The nature of these agreements can differ on a case-by-case basis, but generally we work with global agreements that can allow for any airline around the world to be added to our music network,” Allen explains. Stellar's direct licence music agreements include regional independent record labels, such as Emperor Entertainment Group, which is Hong Kong's largest independent label and features some of Asia's biggest artists. Stellar was the first CSP to secure a direct agreement with the label. It also has separate agreements with London-based dance music company Involved Productions; Chinese music distribution company Kanjian Music; European independent label PIAS; jazz label Mack Avenue Records; and

Indonesian independent label PT Aquarius Musikindo. The varied mix of labels is testament to Stellar's belief that “a well-rounded IFE journey includes a wide range of music options”.

One area that does need to be addressed, according to Allen, surrounds cost inequality in performance licences that airlines have with collection agencies. “As there isn't an agreed global rate or standard, there are many airlines in certain territories paying higher or lower fees for the exact same offering as airlines based in different territories,” he explains. “If airline ticket prices are not determined by the territory that the airline is based in, then performance licence fees should not be either and more needs to be done to move towards an equal global standard,” he suggests.

One way airlines can reduce performance licence costs is to use music developed for them by their CSP, for boarding and deplaning, for example, which can also reinforce the airline brand. Stellar, for

example, offers its clients bespoke boarding music services, as well as ready-to-go pieces developed by its in-house studio arm, Stellar Studios. “Stellar owns full master and publishing rights to the music, which means we can license the music directly to airlines,” says Allen. This can result in savings for airlines in the form of reduced performance licence fees that they pay to their local collection agency, which can amount to hundreds of thousands of dollars every year.

Malaysia Airlines and Virgin Australia are already using Stellar's bespoke music, with “conversations with others as well”.

Kemplay expects this trend will accelerate, predicting it will extend beyond in-flight to sound branding in lounges, online and mobile platforms. In this case, the airline needs to ensure they either fully own the rights to this type of music or have the exclusive licence to use for a set period of time.

Overall, Kemplay believes “so much more should be done in a multi-dimensional way” to improve the audio licensing situation. He says: “It's astonishing that so many major airlines still don't have the necessary music rights licences in place when they have legal departments who will ensure they comply with all other legal requirements to operate and will resolutely defend and value their own intellectual property.” At the same time, Kemplay says it is frustrating that music rights owners are “slow to develop simpler, inclusive licensing solutions, poor at communicating with licensees, overly complex and perplexing in pricing”. ■

The great gig in the sky: More needs to be done to ensure that airlines have the necessary music licences so that passengers do not miss out on this ever-popular form of in-flight entertainment.

