

## **Not *Alright* – Mungo Jerry singer found to have misrepresented ownership of the copyright**

The Intellectual Property Enterprise Court has ruled that the singer of Mungo Jerry had misrepresented to a music publisher that he owned copyrights in the song *Alright, Alright, Alright*.<sup>1</sup> In reliance on the misrepresentation, the publisher had taken a purported assignment of a share of the copyrights and then licensed what it thought to be its share to Sony/ATV.

Eventually the publisher had to pay £33,600 to the true copyright owner to settle an infringement claim. The IPEC ordered the singer to pay that amount to the publisher as damages for misrepresentation. But the court rejected the publisher's claim for lost royalties that it would have earned from exploitation of the song, had the assignment been valid.

### **Background**

Ray Dorset was the singer of rock band Mungo Jerry, which had a huge international hit with *In The Summertime* in 1970.

Eliot Cohen, a director of Associated Music International (**AMI**), first went into business with Ray Dorset in May 1970. They entered into a publishing agreement that remained in force until 1 November 1973, four months after Mungo Jerry's release of *Alright*. The written termination of the agreement contained a schedule of songs that would remain the property of Eliot Cohen's company Our Music Limited (**OML**), in which *Alright* was not listed. Eliot Cohen claimed that he was not aware of the song at that time.

Shortly before the release of *Alright* in July 1973, Ray Dorset's manager, Barry Murray, was contacted by the claimant, French music publishing company Editions Musicales Alpha (**EMA**). EMA asserted that *Alright* was a copy of the song *Et Moi, Et Moi, Et Moi*. The music for *Et Moi* was written by Jacques Dutronc, and the French lyrics by Jacques Lanzmann. The copyright in both was owned by EMA.

By a written assignment signed on 29 May 1973, the copyrights in *Alright* were assigned to EMA. Under the 1973 assignment, writing credits were to be given to Jacques Dutronc as the musical composer, Jacques Lanzmann as a co-author of the lyrics and "Joe Strange" (a pseudonym for Ray Dorset) as the other co-author of the lyrics, which was the case on the record's release. The 1973 assignment was signed on Ray Dorset's behalf by Barry Murray.

In 1975, Ray Dorset and Barry Murray parted ways, possibly because Murray falsely registered some of Dorset's songs with the PRS in his own name. Ray Dorset subsequently asked the PRS to re-register those compositions in his own name, which was done with the exception of *Alright*, for which Barry Murray was registered as one of three co-authors, together with Jacques Dutronc and Jacques Lanzmann .

Eliot Cohen and Ray Dorset resumed their business relationship in 1990, when Ray Dorset sold 50% of his music publishing company Satellite Music Ltd to Eliot Cohen's wife, who became a co-director. In 1993, due to a shortfall in royalties received for *Alright*, Ray Dorset and Eliot Cohen re-registered the song with the PRS and MCPS with Ray Dorset as sole writer, and with royalties to be split 50/50 between Ray Dorset and Satellite. This application was deliberately backdated to 11 June 1972, before Satellite existed and before *Alright* had even been written.

Following a further disagreement, Satellite, Ray Dorset and AMI entered into an assignment on 14 February 2008, in which Satellite purported to assign numerous musical copyrights to Ray Dorset and AMI, at a rate of 75% to Ray Dorset and 25% to AMI. Schedule C to the 2008 assignment was said

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<sup>1</sup> *Editions Musicales Alpha SARL v Universal Music Publishing Limited* [2017] EWHC 1058 (IPEC), 10 May 2017.

to contain compositions owned or controlled by Satellite and written wholly or partly by Ray Dorset, and it included the song *Alright*.

On 10 September 2008, Ray Dorset licensed his 75% share to Universal Music Publishing. Around the same time, AMI licensed its 25% share to Sony/ATV Music Publishing. The latter agreement was not produced at trial, but there was an exclusive licence agreement dated 20 October 1995 between AMI and Sony Music Entertainment (**SME**), which was in force at the time of the 2008 assignment. The judge assumed that, under the terms of the agreement between AMI and SME, AMI's 25% share passed to SME at the date of the 2008 assignment, and that Sony/ATV was SME's successor in title.

In 2010, EMA discovered that *Alright* had been exploited in films and commercials around the world via Universal and Sony/ATV, without any payment of remuneration to EMA, and in 2011 EMA alleged copyright infringement. On being notified of this allegation, Ray Dorset denied that *Alright* was an English-language version of *Et Moi*.

### **EMA's claim for copyright infringement**

EMA brought an action against Universal, Sony/ATV, Ray Dorset, Dorset's company In The Summertime Limited (**ITSL**) and AMI. Ray Dorset argued that he wrote *Alright* (which was not a copy of *Et Moi*), that he was not party to the 1973 assignment, and that EMA did not own the copyright in the song. AMI pleaded that it had no knowledge of who wrote *Alright*, relying on the 2008 assignment and Ray Dorset's 2011 claim that he owned the copyright in *Alright*.

On 7 March 2014, EMA settled its claim with Ray Dorset under a written settlement agreement. Additionally, EMA settled its claims with all other parties (with judgment in default entered against ITSL). The only issue remaining was AMI's 2012 claim against Ray Dorset to be indemnified for the £33,600 that AMI had paid to EMA by way of settlement.

In his settlement with EMA, Ray Dorset admitted and acknowledged that he was not the sole writer of *Alright*, having only written the English lyrics. He also admitted that the 1973 assignment had validly transferred the musical and lyrical copyrights to EMA, and that EMA remained the owner of the copyrights.

### **AMI's claim against Ray Dorset**

AMI argued that, under the 2008 assignment, Ray Dorset had warranted, expressly or impliedly, that Satellite was at that time the owner of the copyrights in *Alright* and that Ray Dorset was its composer, or alternatively, it was an implied term that Ray Dorset would indemnify AMI for any losses flowing from the assignment. Ray Dorset was in breach of those warranties.

AMI also relied on Ray Dorset's representations as to ownership in entering into its licence with Sony/ATV and/or entering into the 2008 assignment itself, and those representations were false. So AMI claimed a right to an indemnity for the settlement costs that it paid to EMA or, further or alternatively, a right to receive damages for loss of royalties.

Ray Dorset argued that Eliot Cohen was responsible for registering *Alright* with PRS and MCPS and so must have known of EMA's claim to the copyright. He further argued that Eliot Cohen had inserted *Alright* into Schedule C to the 2008 assignment, and so cannot have relied on any representation by Ray Dorset that Satellite owned the copyright. Finally, he argued that Eliot Cohen was a de facto director of Satellite at the time of the 2008 assignment, and so any representation as to Satellite's copyright ownership came from Eliot Cohen himself.

### **Ray Dorset's authorship and ownership**

By his own admission in a 1973 interview, Ray Dorset wrote the English lyrics to *Alright*, but for the music he simply changed the arrangement of *Et Moi*.

In the IPEC, HHJ Hacon found that Ray Dorset knew that he was credited only as a joint author of the lyrics for the following reasons:

- (a) when *Alright* was released, the writing credits on the label were “J. Dutronc, J. Lanzman [*sic*], J. Strange”;
- (b) the PRS wrote to Ray Dorset on 5 July 1976 stating that he would be credited as a co-writer instead of Barry Murray, and he raised no complaint; and
- (c) he was sent royalty statements by EMA solely for *Alright*, addressed to “Strange Joe (pseudonym) Ray Dorset”, at least one of which was sent to his home address.

In fact, Ray Dorset accepted a lesser credit than he deserved for the lyrics, suggesting that he knew of EMA’s claim and its resolution via the 1973 assignment, under which he would be credited as a co-writer only of the lyrics. Accordingly, Ray Dorset knew that he never held the copyright in either the music or the lyrics, and so neither did Satellite.

### **Eliot Cohen’s knowledge**

When *Alright* was released in 1973, Ray Dorset was signed to Eliot Cohen’s publishing company OML, but by this time Eliot Cohen and Ray Dorset had fallen out. On cross-examination, Eliot Cohen claimed that, before the PRS registration in 1993, Ray Dorset told him that Ray Dorset had composed *Alright*, and he had believed Dorset. Ray Dorset admitted that at this time Eliot Cohen did not know about the co-authorship claims, and HHJ Hacon accepted that Eliot Cohen believed Ray Dorset to be the sole composer of the song.

By extension, it was reasonable for Eliot Cohen to assume that Satellite, Ray Dorset’s company, owned the copyright in *Alright*, and so reasonable for him to have included *Alright* in Schedule C to the 2008 assignment.

Ray Dorset had several opportunities to check Schedule C before entering into the 2008 assignment and to remove *Alright* from it, but by failing to do so he represented that Satellite owned the copyright in *Alright*. HHJ Hacon accepted Eliot Cohen’s evidence that he would happily have removed *Alright* from Schedule C had Ray Dorset requested it.

### **Misrepresentation and warranties**

AMI entered into the 2008 assignment in reliance on Ray Dorset’s misrepresentation as to his authorship and ownership of the copyright in *Alright*. As a result, AMI believed itself to have received a 25% share of the copyright, and so entitled to license its share to Sony/ATV. The exploitation of this licence in turn resulted in EMA’s infringement claim, which caused AMI to pay £33,600 to EMA by way of settlement.

So AMI succeeded in its claim for misrepresentation under section 2(1) of the Misrepresentation Act 1967. But AMI’s claim that it relied on the misrepresentation in actually entering into the agreement with Sony/ATV failed, as that agreement pre-dated the misrepresentation and Ray Dorset was not a party to it.

Given the finding of misrepresentation, HHJ Hacon only briefly dealt with Ray Dorset’s warranty under the 2008 assignment, mainly finding that Satellite’s express warranty that it owned the copyright in the 2008 assignment also served as an implied warranty from Ray Dorset, as the only person with full knowledge of the truth.

## **Award of compensation**

Ray Dorset was ordered to compensate AMI for the £33,600 that AMI had paid to EMA as losses stemming directly from Ray Dorset's misrepresentation. But the judge rejected AMI's further claim for lost royalties from the exploitation of *Alright*: had there been no misrepresentation, there would have been no purported assignment of AMI's 25% share to Sony/ATV and it would have received no royalties.

## **Comment**

This case turned on a specific and complex set of facts, but it does provide some insight into the intricacies of authorship and ownership of songs, and how both can be a trap for the unwary.

At first glance it might seem that due diligence would have flagged up the historic 1973 assignment. But every subsequent agreement involving copyright in the song relied on Ray Dorset's disregard for this initial assignment. It is unclear from the case whether this neglect was casual recklessness or deliberate deceit on Ray Dorset's part, although the retrospective PRS and MCPS registrations and Ray Dorset's repeated and contradictory changes of position raise questions about Ray Dorset's true motivation. In any event, Ray Dorset was attempting to exploit a song that he knew that he did not write alone.

Nor was Eliot Cohen entirely without fault. HHJ Hacon acknowledged Eliot Cohen's role in the "piece of dishonesty" involved in the deliberate back-dating. But this scheme, labelled as "ham-fisted" by the judge, had no material bearing on the main issues at hand: Eliot Cohen relied on Ray Dorset's word, and so in effect aided Ray Dorset in accessing royalties to which Ray Dorset was not entitled.

For a writer, there is a harsh lesson to be learned in what not to say to the media. In a candid interview with Nicky Horne on the BBC in 1973, Ray Dorset said of *Alright*: "It's a French song. A guy called Jacques Dutronc recorded it ... it's called *Et Moi, Et Moi, Et Moi*." He followed this with an essential statement used against him at trial some 44 years later: "I heard it at a party ... someone had written some lyrics to it, and so I just changed the arrangement and things around a bit, and we decided on this one."

It all goes to show that life of copyright in a song is a long time, and long enough for an inconvenient truth to come to light. The challenge for an acquirer or licensee of a song is to uncover that – or at least to build in the right contractual protections against this sort of latent defect in the chain of title. *Caveat emptor* indeed.

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ABSTRACT FOR ENTERTAINMENT LAW REVIEW

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The High Court has ruled that the singer misrepresented to a music publisher that he owned copyrights in the song *Alright, Alright, Alright*. In reliance on that, the publisher had taken a purported assignment of a share of the copyrights and then licensed what it thought to be its share to Sony/ATV. Eventually the publisher had to pay £33,600 to the true copyright owner to settle an infringement claim. The High Court ordered the singer to pay that amount to the publisher as damages for misrepresentation, but rejected its claim for lost royalties that it would have earned, had the assignment been valid.