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Copyright Licenses for Karaoke

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Licensing has emerged as a major issue in copyright litigation. Historically, copyright litigation hinged on relatively simple questions of whether one party had improperly duplicated or used a copyrighted work. In the last 15 years, however, new technologies like file sharing, streaming media and user-generated mash-ups of copyright material have stretched the boundaries of traditional copyright. High-profile cases involving the likes of Napster, Google, and YouTube forced copyright holders to reimagine their licensing regimes.

Recently, a new front has opened in this battle, in a rather unlikely place. Manufacturers and sellers of karaoke systems have found themselves in federal court, facing questions related to the scope of licenses that they must obtain in order to comply with the federal Copyright Act. These cases have resulted in decisions that illustrate some of the fundamental challenges in licensing today.

For example, in a case brought by Leadsinger, Inc. against BMG Music Publishing, the Ninth Circuit Court of Appeals analyzed how the federal Copyright Act, which provides broad protections to holders of copyrights in music, applies to karaoke devices that display both song lyrics and video images in real time with song recordings. Leadsinger makes handheld karaoke systems that play songs (for which it had obtained compulsory licenses from the copyright owners) and show video images and lyrics on a television screen (for which it had not obtained any copyright licenses). Leadsinger initially sued several music companies, including BMG, in federal court. It asked the court for a declaration that the compulsory licenses for the songs in its karaoke system satisfied copyright law requirements and that no further licensing was necessary. The company also argued that even if its licenses did not cover all the copyrights in the

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combination of music and visual displays in its karaoke system, such nonlicensed uses constituted fair use.

The music companies had obtained a dismissal from the district court, and on appeal the Ninth Circuit affirmed. The Circuit Court held that Leadsinger's system exceeded the scope of its compulsory license. According to federal copyright law, licenses in audio recordings are limited to just that: "material objects in which sounds . . . are fixed by any method now known or later developed." In the somewhat antiquated vernacular of the Copyright Act, such audio recordings are called "phonorecords."

The Circuit Court held that Leadsinger's karaoke machine fell outside the definition of a phonorecord. Instead, it constituted an audiovisual work, because it combined the (licensed) music recordings with an additional element, the display of lyrics and images on a television. Therefore, the Court concluded that Leadsinger had to obtain a different license to display the lyrics, in addition to its license to play the songs themselves. Also, the Court rejected the fair-use argument because Leadsinger's product, which was designed primarily for profit, did not meet any of the fair-use standards.

This case, and similar ones from other federal courts, shows that companies need to be cautious when obtaining licenses in copyrighted works. Counsel should review the intended use carefully and ensure that the correct license is obtained. Otherwise, companies could find themselves in federal court, lip-synching the blues.

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