

Heaven Help Us

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***Abstract:** A fictionalized case based upon a real situation to determine royalties due from the unauthorized use of copyrighted music. This case can be used in accounting auditing classes.*

Joy Ellis, managing partner of Ellis and Stephens, Certified Public Accountants, was reviewing her calendar in preparation for her day. She was particularly curious about her first appointment with a potential new client, Joseph Williams. Joseph was the keyboardist who performed for her niece's wedding and reception. Joy was impressed with Joseph's performance. Much of the music was apparently original compositions and his system allowed him to play music which sounded like there was a full orchestra. When Joseph heard that Joy was a CPA, he asked for her business card, but declined to go into any details at the wedding. Just then there was a knock at the door and the firm receptionist ushered Joseph into her office.

While shaking his hand Joy said, "Joseph! It is so nice to see you again. I really enjoyed your playing at my niece's wedding. Please have a seat and tell me what's on her mind."

Joseph began his story by saying, "I work full time in the computer industry, but my passion is music. I have an agent, am a member of BMI which is a musician's union and have done enough work in the music area that I nicely supplement my salary. My agent not only finds performances like your niece's wedding, but I also compose and perform my music which results in royalty income."

Joseph continued, "BMI licenses entities to use member's music and selectively monitors for unauthorized use of members' works. Most of this occurs when entities obtain appropriate licenses and by obtaining summaries of CDs and DVDs sold from their bar code information."

Joseph took a deep breath and then said, "A rather delicate situation has developed. I'm a member of the Tampa Bay Church of God (TBCG). TBCG has a very large congregation, ten ministers on staff, and has accredited school offering classes from preschool through eighth grade. TBCG has a creative production ministry which is dedicated to making a difference through technology and the arts, including film productions. In October 2007 I gave TBCG a demonstration disk of music. This music is much like what you heard at the wedding. I use composing software to write the pieces for full orchestra. So even though I'm only using a keyboard, the finished product sounds as if an entire orchestra performed the piece. The production minister had asked for this material for possible use in a church production. The disk that I handed the minister contained my orchestral performances of all of the original music which I had composed for film project. On the disk I wrote: For demonstration purposes only, copyright 2007 Joseph Williams. I asked him to get in touch with me to let me know what he thought about the music and

indicated my willingness to make any artistic changes required. And then I added ‘if TBCG likes music on the demo disk that we could go ahead and draw up the royalty contracts. The production minister is also a union member, and knowing that I own the copyrights to these pieces and is aware of the process involved.’”

At this point Joseph handed Joy a printout from the BMI site.

“Both the performing right and the mechanical right are granted to a copyright owner by law as two of the distinct parts of a copyright.

The public performing right entitles the copyright owner to receive royalties when his song is sung or played, recorded or live, on radio and television, as well as through other surveyed media such as the Internet, live concerts and programmed music services. Such royalties go to both the composer and publisher through their performing rights organization, which grants licenses to perform the music in their respective repertoires to thousands of users of music in public places, such as broadcasting stations, hotels, clubs, colleges, restaurants, stores, etc. More details about the responsibilities of music users can be found in BMI’s brochure, “The Legal Aspects of Performing Copyrighted Music.”

The “mechanical” right is really the right to reproduce a piece of music onto records or tapes and certain digital media. (Non mechanical reproduction includes such things as making sheet music, for which royalties are paid by the publisher to

the composer.) When reproduction of music is made onto a soundtrack of a film or TV show, the reproduction is called “synchronization,” and the license that the TV or film producer needs to obtain is called a synchronization or “synch” license. Mechanical royalties and synchronization fees are paid by record companies, digital media providers and film and TV producers directly to the copyright owner....”¹

Joseph continued, “Shortly after delivering the disk I started having coronary problems and ultimately had by-pass surgery. Consequently I was unable to participate in church activities for 6 months. July 2008 the production minister casually mentioned that the church had used this copyrighted material in a video which was sold during the Christmas season. He said that the church has completely sold out of the 10,000 copies of the DVDs. The production minister told me that the church attempted to contact me. I did change my cell phone number. TBCG did not try calling my wife’s phone number, nor did they send a letter.”

Joy interjected, “I’m assuming that you are concerned that the TBCG has not offered to pay your royalties and that you believe that, if they pay you, that you might be short changed. If this is the case, why wouldn’t BMI know about this and handle the situation for you?”

Joseph said, “BMI monitors normal distribution channels and bar code sales. It would be impossible to catch every copyright violation. For example, a self employed disc jockey that plays CDs at a school dance would probably go unnoticed. The DVD sales were through the church

bookstore and in several instances I know that the merchandise sold did not have bar codes. I have yet to receive a copy that has a bar code on it. A second issue is that BMI and other unions like ASCAP or SGA publish their copyright infringement victories on their websites. If possible, I'd rather settle this privately to prevent embarrassing the church."

Joy said, "What would you like Ellis and Stephens to do for you?"

Joseph said, "Before getting the union involved I'd like to engage your firm to audit my church's financial records. I would like to know three things: first the number of DVDs that were sold. These DVDs are short movies with my soundtrack. It is also possible that either DVDs or CDs were sold or given to other churches. These churches would have used the soundtrack as part of a live performance at their church. This is similar to Karaoke. The performing church is legally obligated to pay copyright royalties.ⁱⁱ And finally, I would like to know if the Christian Broadcasting Network (CBN) received any copies of my music in either form. There has been some indication that this DVD actually was aired on CBN. If this is the case, then I am owed royalties by CBN. If I can get this information then I can approach TBCG directly with a bill for royalties. And if they continue to drag their feet, I would consider hiring an attorney to expedite payment. At the same time I do have ongoing contracts with the church for other projects, many of which could be quite lucrative, so I really want to get a resolution to this delicate problem."

"There may be some problems with your request Mr. Williams. Will TBCG even allow us in to look at their financial records? In order to be able to perform an audit

TBCG's accounting books and records have to be in good condition. Part of the audit would involve testing their accounting system and this part of an audit would probably result in our fees being more than the royalties that you are attempting to collect," Joy said.

Joseph responded, "TBCG has annual audits by one of the major regional CPA firms, so I'm confident that they maintain an appropriate set of books. Further, church policy is that any church member has the right to examine the books at any time. They call it 'transparency.' Therefore if they do not allow your firm access to the records, that will may be enough to confirm my suspicions."

Joy concluded the meeting by saying, "Alright Mr. Williams let me consult with my partner and we will get back to you. The next step will be for our firm to draft an engagement letter which will include the services which we will be performing along with how you will be billed for our services. I will email you a copy of this document within a week for your review. It's been a pleasure meeting with you today. Please feel free to ask any questions, or if you think of anything else, please feel free to call or email."

Discussion Questions

1. According to professional literature, what is this type of engagement called?
2. Assuming that Ellis and Stephens can get access to TBCG accounting records and documents, should Joy Ellis recommend that her firm perform an audit, review, or compellation engagement? Discuss the reasoning behind your recommendation.
3. Draft an engagement letter for Joseph Williams to sign.
4. What procedures and documents should the CPAs request from TBCG in order to give Joseph Williams his desired information?
5. Are there any other issues that Ellis should discuss with Williams?

Teaching Note/Instructor Manual available from the Journal of Business Cases and Applications.

ⁱ <http://www.bmi.com/career/entry/533748>

ⁱⁱ http://www.ascap.com/press/2005/infringement_012405.html