Genius not looking so smart after Google escapes liability for ‘misappropriating’ lyrics

Last December song lyrics website Genius sued (.pdf) Google and partner LyricFind in New York state court for allegedly misappropriating song lyrics from its website. It charged the two defendants with breach of contract, unfair competition and other claims. The case was procedurally removed to federal court under the theory that it was really a copyright case “disguised” as state law claims.

Federal courts have exclusive jurisdiction over copyright claims, which arise under federal law.

Damages ‘no less than $50 million.’ The original state court complaint said, “Defendants Google LLC and LyricFind have been caught red-handed misappropriating content from Genius’s website, which they have exploited-and continue to exploit-for their own financial benefit and to Genius’s financial detriment.” The complaint asked for not “less than $50 million, including, but not limited to, lost licensing and advertising revenue.”

The controversy and case were widely covered last year. Genius used a clever “watermarking” strategy to catch LyricFind and Google allegedly stealing lyrics “red-handed.”

At the time, LyricFind acknowledged that it had Genius lyrics in its database, which were then displayed in Google oneboxes. Google defended itself by pointing to LyricFind: “We’ve asked our lyrics partner to investigate the issue to ensure that they’re following industry best practices in their approach. We always strive to uphold high standards of conduct for

ourselves and from the partners we work with."

Seemingly bad behavior. To many untrained observers there clearly seemed to be wrongful conduct on the part one or both of the companies. The controversy also resonated with many because it played into the larger narratives of Google's market power and publisher frustrations with zero-click results.

Here was Genius, which had invested considerable time and money in developing its lyrics database, allegedly being deprived of traffic and revenue – an argument that many aggrieved publishers identify with. The problem was that Genius didn't really have any rights in the lyrics it was transcribing and displaying, despite having legally licensed them from music publishers.

The music publishers owned the lyrics, not Genius, which had created a "derivative work" under copyright law. The company potentially had actionable claims under state law. But the court held those claims were all preempted by federal law because they were really copyright claims. So they went away; and because it couldn't state a claim under federal law the entire case was dismissed.

Why we care. Even though the case was decided in Google's favor it was mentioned during the antitrust hearings in Washington last week. And it has undoubtedly contributed to the perception that Google is too powerful. Some of the same concerns were behind the 2018 revision of European copyright law, now generating search-licensing revenue for news publishers. The difference is that the European publishers are actually the copyright owners, unlike Genius.

Indeed, copyright ownership is the key factor in Genius' defeat. And the case probably means that non-copyright owners who've licensed content have no legal resource if search engines or other third parties simply want to scrape their

content wholesale.

About The Author



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