

*Rearranging the Roles of Performers
and Composers:
Assessing the Significance of
Fisher v Brooker*

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Composers' rights and Performers' rights

- There are cases where musical performers may be 'authors' for the purpose of copyright – as such they may be entitled to more recognition (and licensing revenues) than is normally due under performers' rights

If the 'arrangement' is original...

- Some original works of joint authorship – musical arrangements – may not have been traditionally recognised as such within the music industry.
- If the composition is written by one person, but then performed by an entire group of musicians, it appears from recent UK case law that as long as a performing musician makes an original contribution to the creation of an arrangement, he or she will be a joint-author of the resulting musical work.
- As a result of this, the performing musician is deserving of a share of copyright in that arrangement, and by analogy, a share of licensing revenue from the exploitation of the arrangement.
- The importance of this is underlined by the fact that the final arrangement is often the 'hit' we hear on radio.

Pink Floyd - The Great Gig in the Sky)

- http://www.youtube.com/watch?v=h_L8hulkIXU (Clare Torry comes in at 1.07)
- Piano instrumental written by Rick Wright, with Torry vocal.
- The typical attitude taken towards session musicians/performers can be summed up by Roger Waters:
- *“Alan [Parsons] suggested Clare Torry. I've no idea whose idea it was to have someone wailing on it. Clare came into the studio one day, and we said, "There's no lyrics. It's about dying – have a bit of a sing on that, girl." I think she only did one take. And we all said, "Wow, that's that done. Here's your sixty quid.”*

Torry v Pink Floyd (2004)

- In 2004 Torry sued the band, claiming joint-authorship.
- In 2005 the case settled, apparently in her favour.
- All pressings of Dark Side of the Moon after 2005 list the composition to Richard Wright and Clare Torry (moral rights implications)

Procul Harum - A Whiter Shade of Pale

- <http://www.youtube.com/watch?v=Mb3iPP-tHdA>
- Musical composition written by Gary Brooker
- The band was formed in the studio to record a full pop version
- Matthew Fisher added the famous organ part in counterpoint to the chords devised by Brooker
- The musical work, and associated royalties, were credited to Brooker only

***Fisher v Brooker* (2006)**

High Court

- Some confusion in the HC as to whether the early composition of Brooker was a work or a mere 'sketch'
- But HC stated that Fisher had satisfied the requirements of a joint author – crucially he had contributed sufficient originality to the resulting musical work

Fisher v Brooker (2008)

Court of Appeal

- Court of Appeal clarified that there were two 'works' of significance
- Firstly, the musical work composed by Brooker
- Secondly, the musical work comprising the full band arrangement, including Fisher's organ part
- They upheld the HC in stating that Fisher was a joint author of the arrangement
- But stated that he had waited too long in bringing the case so could not be awarded royalties

Fisher v Brooker (2009)

House of Lords

- Nothing under the law preventing Fisher from waiting several decades to claim his share

Performers are Authors (of arrangements)

- The law on authorship and joint authorship in this area is clear - any musician who adds sufficient creative originality to a musical work during the performance and recording process is a joint author of the resulting arrangement.
- However, although the law is clear, music industry practices may not take account of this. For this reason, it is important that musicians in groups place their legal relationship to each other regarding the works which result, including the terms of the distribution of royalties, in writing before they begin the artistic process.