

Prince in the Courts: his legal legacy

Owen O'Rorke | 27 April 2016

Given his great genius and eccentricity, it is no surprise that most tributes to Prince Rogers Nelson have focused on his music and personal enigma – not his contribution to copyright law. Even so, the notoriety of his relationship with rights ownership and record companies was such that few obituaries failed to note his legal battles. There was his possessive approach to his back catalogue, which it is hard to criticise; and a sometimes heavy-handed policing of his copyright, on which point (by his own admission) he was prone to overstep. As a means of maximising creative revenues, the jury is still out on his approach; but for defying convention in industry practice, as well as in his recordings, the music business owes Prince a huge debt.

If legal issues have been more discussed than is usual when pop-culture icons pass on, that is a reflection of how Prince's own attitude to copyright has impacted the mourning process. In the digital age, fresh rites have evolved for marking the passing of icons: an orgy of sharing YouTube clips on social media, fuelled by instant-access nostalgia trips on streaming platforms such as Spotify. Such was the case with David Bowie – and the likes of Sir George Martin, Glenn Frey, Merle Haggard, Phife Dawg and Lemmy from Motorhead (it's been a [rough few months](#)). But this time around, music fans – from the casual to the obsessive – have found legal obstacles in the way of their tributes. Prince's works are still available on lesser-known licence-only platforms like SiriusXM and Pandora, as well as more famously on Tidal, but not where the average consumer is used to finding them.

To circumvent the rights restrictions on YouTube, social media mourners have been reduced to passing around official videos of Prince compositions recorded by others (from Sinead O'Connor to the Bangles) and a handful of live clips of Prince performing covers, such as his [soloing](#) on the Beatles' *While My Guitar Gently Weeps* for George Harrison's tribute concert. Even these examples are limited, given the complexity of underlying rights – composition, recordings, performance and filming – which we normally rely on large platforms like YouTube to navigate. Prince's [own view](#) was that the video platform giant did not pay "equitable licensing fees".

Whilst increasing the point-of-sale market value of the music itself, the Prince approach also denied millions the opportunity to fill Facebook and Twitter with his glorious, joyful music: to evangelise the unconverted, to share lesser known gems from his huge canon, and stir memories for the lapsed disciples of the 80s and 90s. Is this a missed marketing opportunity – or will the obvious hunger it creates for original recordings convert into record sales or downloads? The answer to both questions is yes: paid-for downloads [soared](#) and his albums promptly filled the [top 5 positions](#) in the midweek charts, but the net gain to the Prince estate is harder to determine long-term. To a certain extent, that applies whether an artist is alive or dead: the balancing exercise is always between spreading the message and controlling the content.

With his lucrative live performances now consigned to memory, this dilemma will weigh

heavy on the mind of Warner Bros (the record company with which he famously fell out and later returned to). The death of a great always creates a spike in album sales – so it is hard to determine how far the margins were affected by the rights restrictions.

Perhaps a clearer bellwether is to be found in subscriptions to Tidal – the [divisive](#) “artist-run” streaming site pioneered by Jay-Z, supported by Beyonce and Kanye, and which from autumn 2015 enjoyed Prince’s [full endorsement](#) and streaming licence to his entire back catalogue. But the results are inconclusive, says *Wired* magazine. The move did not lead to a notable jump in subscriber loyalties at the time, perhaps because fans had invested time, playlists, apps and fixed contracts into other services. And that does not seem to have changed after his death: *Wired*’s [unofficial poll](#) of 2,000 respondents indicates only 5% had joined Tidal specifically to get their hands on his music.

While a 5% margin is considerable by reference to one artist across an entire industry, few names are as iconic as Prince: if any back catalogue were able to change the game it would be his. It is interesting to note that even the ultra-protective Beatles and Led Zeppelin eventually negotiated terms of business with Spotify and Apple (who [won over](#) Taylor Swift with their artist payment policies, and have tied up exclusive deals with [U2](#) and others).

A comparison of how two trailblazers can take different approaches may be seen in a single clip of Prince performing Radiohead’s *Creep* at Coachella. Initially Prince took steps to have the video removed from YouTube, but Radiohead – clearly flattered, but also prominent among the industry’s early adopters of technology – insisted it should remain available. Radiohead’s rights in the composition (and those of whoever owned the footage) would seem in this instance to have [trumped](#) Prince’s, with performers’ rights offering more limited remedy.

Radiohead famously offered their 2007 album *In Rainbows* “free” to download according to a virtual honesty box, with fans able to pay what they thought the album was worth (averaging out at between £2-3 globally, [according to reports](#), despite glowing reviews – although overall units were up on their previous two albums). Although Radiohead’s idea was [hailed as a success](#) of sorts, that same year Prince took a comparable approach that might just have been more canny.

His 2007 album *Planet Earth* was given away free with copies of the *Mail On Sunday* – a surprising, if commercially astute choice – and his massive 21-date “Earth Tour” residency at the O2 Arena promptly sold out every night. That meant around 350,000 tickets at a cover price fixed at an accessible, if idiomatic, £31.21 (all publicised by his [new friends at the Mail](#), no doubt willingly... if not also contractually). Retailers were [furious](#), but the tour was huge and the outreach for the new music was greater than had become the pattern for his late albums – lead track “*Guitar*” has featured heavily in UK radio play since his death.

Less successful were some of Prince’s efforts to bring the fight to the end user. A ten-year lawsuit brought by a woman called Stephanie Lenz, who received a takedown notice (under the controversial US Digital Millennium Copyright Act) over a 29-second video of her toddler dancing to *Let’s Go Crazy*, is still creaking on at the 9th Circuit Court of Appeals in the US. In 2014 he sued 22 Facebook users for linking to bootlegs and then (after a backlash) dropped hands on the claims, without prejudice, admitting he owned bootlegs himself.

Prince's death could yet be the undoing of his life's work to protect his rights. Look on YouTube for Prince concert footage, and you will find there is more already than there was a week ago: a symbol, perhaps, of the copyright whip falling into new hands. The great irony is that his back catalogue is now in the hands of Warner Bros, the record company whose perceived efforts to control his output – both legally and creatively – drove him to daub "["Slave" on his face](#)" and change his name to a [dingbat](#).

Despite the conspiracy theories, Warner Bros did nothing Machiavellian in this: it stems from a favourable deal Prince struck in 2014 giving him fuller control of his back catalogue while alive, using the leverage of a 35-year publishing rights reversion in US copyright law. The uncertainty lies in the fact that Prince's estate plan, along with the discretion of its administrators, is unknown. A will can create a trust that restricts and informs the exercise of trustees' decisions from beyond the grave, for example in terms of commercial uses of his songs; but as his former lawyer Lee Phillips has stated to the [Hollywood Reporter](#), "Who knows if he even has a will? He was a unique person..." (his sister Tyka has since [claimed](#) he did not).

Countless fans who did not hang on to their CD collection may secretly be hoping their idol's wishes are not respected, just this once. Prince did not always see eye to eye with those fans: not only in sometimes refusing to play the hits, but also in refusing to let them play the hits except on his terms. Those who stand to benefit from his estate's intellectual property will have to balance any legacy wishes with effective exploitation of the rights. However, with the dust still to settle from the digital revolution, Prince may yet be vindicated in the legal and musical decisions he took when he was furiously, incomparably, thrillingly alive.

If you require further information on anything covered in this briefing (except where to find illegal downloads) please contact [Owen O'Rorke](#) (owen.o'rorke@farrer.co.uk;) +44 (0)20 3375 7348, or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Intellectual Property](#) page on our website.

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