



## The intellectual property rights in the recording industry

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### Summary

The recording industry, over the years, has undergone numerous changes and drastic. Innovation always permeated, now allowing glory days, now causing breach of paradigms, which led to discussions on the protection of rights, but also demanded that the industry reinvent. Intellectual property rights have always been part of the history of the music industry, often used as competitive advantages and, other times, preventing third parties improperly take advantage of the efforts of their holders. The object of this study, which presents a descriptive exploratory research on the topic, with analysis of cases, search up data on the use and application of the main intellectual property instruments, within the music industry, in a critical-reflexive analysis over the current scenario of innovation, especially under the bias of the new model of music consumption.

Keywords: instruments of intellectual property, intangible assets, music industry, music industry.

### 1. Introduction

The recording industry, composed of companies responsible for recording, editing and sound media distribution, perhaps the industry's most influenced by technological innovations of the last decade, especially those relating to new methods of provision and consumption of music. Reconfigurations in the offer of products, services and relations between producers, artists and consumers has occurred within the field of music through the establishment of an open space, multiple and interactive reordered his command and launched the distribution and control logic major labels. However, this same reconfiguration has led to a greater vulnerability with regard to management practices and control of intellectual property rights, as suggested Days (2010).

Since the beginning of the years 2000, relations between new digital technologies and production and consumption of music has been intensifying and some alternatives to engineering and economics that intertwined intellectual property rights, cultural consumption and cultural diffusion has been notabilizando and composing part of the social experience of contact with music, the example of streaming channels for smartphones, for example. Only this format of consumption produced in 2015 1 3.2% growth in turnover of the Phonographic Industry, made unprecedented since 1998 (THE ECONOMIST, 2016).

If we take into account the role played by information in contemporary society, as suggested by Marchi (2006, p. 173), it is necessary to reflect on the place of industry and the alternatives to preservation of rights over works in a context of connectivity and flow to which the technology seems to be adequate, but still offering sensitive challenges to international intellectual property legislation. These difficulties reach including the very conceptualization of the scope, extent and limits of intellectual property category, however, following the guidelines of the world Organization of Intellectual Property, we take your exemplary character here and the possibility of grouping of products and processes it framed for understanding the contemporary phenomenon of musical content consumption against the instrumental that typifies the content in three (or more) major categories of recognition and guarantee rights (copyright, industrial property and protection "*sui generis*") whose main axis of responsibility and recognition identification about the creation (individual and staff in collective and private first in the second, collective and community, in the third).

In this work, there is the longing for fatigue of all concepts of intellectual property assets or all issues involving innovations in the recording industry, however, the goal is to analyze how the main modalities can be used and applied to the often reinvented world of music.

## **2. The intellectual property rights in the recording industry**

### **2.1 Brand**

Mark may be regarded as a distinctive sign, visually perceptible, that identifies a product or service. Can also be set to signal characteristic assigned to optional products and services form to identify and differentiate them from others of the same genus or species (DI BLASI, 2003, p. 115).

To Kotler (1999, p. 233):

*A brand is a name, term, sign, symbol or design, or a combination thereof, which is intended to identify the goods and services of one seller or group of sellers and to differentiate them from competitors. A tag name is that part of the brand that can be pronounced or pronounceable.*

As Moreira (2006, p. 17), "the marks were evolving gradually and permanent, since his earliest demonstrations in the primitive stages up to the more complex forms of nowadays, due to the material needs of man", note that the very notion of brand evolves along with the human being.

Naturally, the brands have evolved, too, with the recording industry, passing not only to identify the products or services it inherent, but constituting important intangible assets for companies, that can license them and transacioná them, In addition to serving as a base for mergers or acquisitions, securitization or loan guarantees, as Reilly and Schweih (1998, p. 57).

Fulfilling your primary function, main, some examples can be given of tags that identify important services and products of the record industry, including those which identify authors, bands, performers, record labels, manufacturers and companies more broadly.

Particular case on the establishment of brands is Spotify, a company specialized in providing access to millions of songs, in digital format, via streaming technology. A pioneer in betting in online music consumption, the Spotify alone is worth more than all the U.S. music industry, according to the Wall Street Journal: "the net value of Spotify reached US \$8.4 billion, more than double the Pandora, your nearest rival, with about \$ \$3.5 billion ".

About the if Spotify is the importance given to the registration of the marks by the company SPOTIFY AB, which sought protection in several classes of products and services by specifying them in detail, in search of support all the company's operations, by the Instituto Nacional da Propriedade Industrial (INPI):

**RESULTADO DA PESQUISA** (31/05/2018 às 16:59:55)

Foram encontrados **16** processos que satisfazem à pesquisa. Mostrando página **1** de **1**.

Número	Prioridade	Marca	Situação	Titular	Classe
840012519	31/01/2012	<b>N</b> SPOTIFY	Registro de marca em vigor	SPOTIFY AB	NCL(10) 09
840012560	31/01/2012	<b>N</b> SPOTIFY	Registro de marca em vigor	SPOTIFY AB	NCL(10) 38
840012543	31/01/2012	<b>N</b> SPOTIFY	Registro de marca em vigor	SPOTIFY AB	NCL(10) 35
840012608	31/01/2012	<b>N</b> SPOTIFY	Registro de marca em vigor	SPOTIFY AB	NCL(10) 41
840012624	31/01/2012	<b>M</b> SPOTIFY	Registro de marca em vigor	SPOTIFY AB	NCL(10) 09
840012683	31/01/2012	<b>M</b> SPOTIFY	Registro de marca em vigor	SPOTIFY AB	NCL(10) 35
840012705	31/01/2012	<b>M</b> SPOTIFY	Registro de marca em vigor	SPOTIFY AB	NCL(10) 38
840012764	31/01/2012	<b>F</b> -	Registro de marca em vigor	SPOTIFY AB	NCL(10) 09
840012721	31/01/2012	<b>M</b> SPOTIFY	Registro de marca em vigor	SPOTIFY AB	NCL(10) 41
840012799	31/01/2012	<b>F</b> -	Registro de marca em vigor	SPOTIFY AB	NCL(10) 38
840012829	31/01/2012	<b>F</b> -	Registro de marca em vigor	SPOTIFY AB	NCL(10) 41
840012772	31/01/2012	<b>F</b> -	Registro de marca em vigor	SPOTIFY AB	NCL(10) 35
840613059	16/08/2013	<b>F</b> -	Registro de marca em vigor	SPOTIFY AB	NCL(10) 09
840613105	16/08/2013	<b>F</b> -	Registro de marca em vigor	SPOTIFY AB	NCL(10) 35
840613156	16/08/2013	<b>F</b> -	Registro de marca em vigor	SPOTIFY AB	NCL(10) 38
840613199	16/08/2013	<b>F</b> -	Registro de marca em vigor	SPOTIFY AB	NCL(10) 41

Páginas de Resultados:

**1**

Figure 1: trademark records made by Spotify AB. Source: INPI database

Interestingly, the company didn't have the mark in class 42 (for software-related services), as did its competitor Apple Music (909585792 process) and Pandora (907934439 process) and streaming videos, like Youtube (records 828594643 and 828594465) and Vimeo (registration 830987819).

About the breadth of protection for products and services, it is important to note that artists and companies also use the strength of its successful brands for products not necessarily linked to the music industry. This shows that the power of music goes beyond her own, determining patterns of consumption in other swaths of the market, lending them their values, feelings, your attitude and your behavior.

The opposite also happens. Established and successful brands promote partnerships with companies from the world of music or artists, to promote their sales. For all of the above, the importance that the brands have for the record industry, is in the identification of your products and services, is for the company's valuation, which can make use of them to form partnerships, license them, give them and market them, and so, pillars of the economy.

## 2.2 Patent

Patents are defined as a temporary law granted by the State to give the holder of the invention the right to prevent third parties to explore or use, without your consent, the object of your rank and/or process or product, obtained by means of a procedure provided for by law.

In the recording industry, a technological environment of high competitiveness, the monitoring of patented technologies or in the process of patenting, can be an interesting source of information about technological trends. In addition, the protection of inventions by the actors of the music industry can guarantee them the right to prevent third parties improperly take advantage of their efforts, research and development, or even be a valuable instrument, able to be transferred, traded or licensed by your holder, insofar as it determines, clearly, the start date and order of protection and the content of the invention.

## 2.3 Software

As stated earlier, the software in Brazil, is considered a right of copyright, however, will be treated in topic section, on the basis of its peculiarities provided for in law 9,609 (BRAZIL, 1998) and other devices, as well as the disparity of treatment given by other countries, like the United States, protect software such as patent.

According the same legal device, it is understood as the natural language system software or encoded set to a support that allows the manipulation and handling of information based on digital or analog technique (BRAZIL, 1998). Your registration can be done by the BPTO, and may or may not be

confidential, that is, the software can be registered without having revealed the content of your programming. The INPI acts as faithful depositary of the software, which can only be revealed by court order, in order to promote a technical expertise, in accordance with Art. 4. paragraph 3 and 4 of the normative Instruction 11-2013 of the INPI.

Complies with the software, such as all copyright, does not require registration, although it is recommended in order to verify your authorship and date of creation, among other advantages. The right to exploit it economically lasts for 50 years from January 1 of the year following that of your publication or, in the absence of publication, the date of your creation, in the form of the paragraph 2 of Art. 10 of Law 9609/98.

The software is present in the recording industry on the uptake of sounds; in the mix, from computerized consoles and tables; within musical instruments like keyboards and synthesizers; in the edition of phonemes, which allows the manipulation of sounds and can capture and insert effects and even correct noises, the example of the "autotune".

Note that the software, as well as being an indispensable tool in music production, can be considered, in the set presented here, the instrument of greater proximity to the public today, especially the way it affects the music consumption patterns .

The file-sharing software and embedded software digital music player devices were responsible for a real paradigm-breaking of the record industry. Invented in South Korea in 1998 by Saehan, the first MP3 in the world was called MPMan (ADNER, 2012). Since then several companies began to produce devices with music software in digital format, but only with the advent of Ipods is that technology has gathered strength and became the object of desire of consumers. Such innovations may have brought the traditional recording industry, but also what might be called a new era for the music industry, in addition to providing consumers with an almost unlimited access to musical content.

The most iconic example of this rupture was the creation of Napster, a program in centralized network file sharing, through direct access to certain files stored on other machines that are also connected to the network and the software on which user played the role of server and also as a consumer. In early 2001, Napster was the your height, with more than 8 million users connected trading a daily average of 20 million songs, but couldn't resist several lawsuits filed by record companies and bands on charges of violation of their Copyright, as reviewed by Lima and Santini (2004, p. 10).

The most popular program of file sharing is considered the motto of the decline of the music industry. The experience of accessing music through the Internet attracted programmers, bringing them closer to consumers, constituting an innovative process consistent and diffusion of music consumption. Despite

losing the "war" in 2001, the Napster case opened the door for other sharing softwares, including streaming consumption. The emergence of these innovations changed the old balance between consumers, intermediaries of the industry and the owners of the copyright. Consequently, the increased use of these types of software has caused the judiciary and, of course, the legislation should arise to fill the gaps in the protection system.

## 2.4 copyright

Copyrights are perhaps the most intellectual property assets debated and litigated the music industry, and can be defined as:

*The set of privileges that the law recognizes all intellectual creator about his literary, artistic or scientific productions, some originality: extra order payment of compensation, in principle, without limitation of time; and equity order, the author, throughout your life, with the addition, for the successors listed in law, the deadline for her set (KEYS, 1995. p. 28).*

The copyright can be copyright (authors and publishers) and related to copyright (performers, musicians and record labels) and your protection registry independent, however, to promote the record, it is possible to prove the authorship and determine the date of creation. The musical works and phonemes can be registered at the National School of music (Federal University of Rio de Janeiro) or the National Library Foundation (with EDA, your Copyright Office).

Copyrights are divided into moral and patrimonial rights. Moral rights are personal in nature and extremely typical order of author, but about the disclosure, amendment, and above all the right to protect the author. According to the ECAD:

*Moral rights ensure the authorship of creation to the author of an intellectual work, in the case of works protected by copyright. Already the economic rights are those that refer mainly to the economic use of intellectual work. Is the author's exclusive right to use your creative work the way you want, as well as allow others to use, in whole or in part.*

*Unlike moral rights, which are non-transferable and inalienable, the economic rights may be transferred or ceded to other persons, to which the author grants right of representation or even use of their creations. If the intellectual work is used without permission, the responsible for the unauthorized use will be violating copyright rules, and your conduct may generate a lawsuit.*

The economic rights are therefore those that authors can license to companies, record labels, in your most, for music can be reproduced, published, adapted, translated, distributed, interpreted, performed and can

never abdicate to be recognized as an author. The economic rights decay with the advent of a period of 70 years after the author's death, according to law No. 9,610/98, however, moral rights can never fail to be recognized.

The Central Bureau of collection and distribution (ECAD) is the entity responsible for the collection and distribution of royalties in Brazil. It is administered by nine collective management associations who are born to manage the rights of authors, do collect and distribute the values across the country, representing, so thousands of affiliated artists.

The copyright of musical works and Phonograms may be exercised directly by their owners, or managed collectively by ECAD, and making unauthorized public this type of content – including for download-was inserted in article 184 Brazilian penal code.

It is not necessary that the author belongs to one of the nine associations to have preserved and guaranteed their rights and can manage on its own the rights to your repertoire, but the collective management makes it easier for users of music receive an authorisation wide and only for execution of any musical work protected and registered in the database of the ECAD and associations of music.

In fact, with the significant increase in the consumption of music, caused by the use of technologies already addressed in previous topics, especially the streaming should also increase the values collected and your distribution to equity holders of the work. This fact is not occurring.

In fact, this is a highly debated issue. Artists ask for transparency in storage, streaming companies ask for patience and the record companies and publishers also question rights.

## **2.5 industrial design**

In Brazil, with the enactment of law 9,279/96, the Industrial Design went on to be protected through their own record. However, just as in the case of software, some countries (like the United States) protect the patent title.

The registration of Industrial design (DI) protects, as the INPI "setting outside of a three-dimensional object or an ornamental pattern (two-dimensional) that can be applied to a surface or an object. That is, the registry protects the appearance that distinguishes the product from others ". It should be stressed that cannot be protected as DI "features, practical advantages, or forms of manufacturing materials, as well as one can not protect colours or the Association of an object" (INPI, 2015).

We cannot claim that the design of the products involved in the music industry was not important, since



the emergence of the first products and devices for the consumption of music, however, one company, specifically, can be held responsible for " Glamour that revolutionized the history of music players: Apple. For Apple, the industrial design has always been the main focus of products, nevertheless have excellent success in the performances of their products, by their incredibly innovative software and hardware. The development of any Apple device always starts with the design and usability testing (ease of use). After this step the product is sent to the hardware sector, responsible for the Assembly of what the design team calls. This concern becomes dormant even when it began the process of decline of one of the main products marketed by the company (the Ipod) the popularization of streaming services.

The design continued to be important not only for the sale of products, but also for the creation of patterns of consumption and even "fans" loyal to certain brands or product line of the music industry. However one can see that, in the present day, the products are developed to meet diverse needs, so all-in-one: listen to music on TV, watch a video on a cell phone, record a song through personal computers, in domestic environments promote the themes through social networks, etc.

Now, industrial design, while intangible property asset, is thought to products that have numerous features. To the extent that restrict the devices needed for all these functions, increase the challenge of the designer, which should consider the practicality and, mainly, on your attractiveness.

## **2.6 integrated circuit Topography**

As the INPI, "topographies of integrated circuits are related images, built or encoded in any medium or form, representing the three-dimensional configuration of the layers that make up an integrated circuit. In other words, is the design of a chip. Chapter III of the law of 11,484 31 May 2007, sets out how the intellectual property protection of topographies of integrated circuits. Your protection is granted for a period of 10 (ten) years from the date of the deposit or of the first operation (which happened first).

Integrated circuits are nothing more than Chips. These integrated circuits, among other things, are used in memory or processors and devices like cellular chips, chips smarphone, motherboard and RAM of computers, MP3 Players, as well as devices such as Digital Televisions and Tablets, among others, to perform functions in electronic equipment, for example, with microprocessors and memory (JUNGMANN; BONETTI, 2010).

Thus, were and still are of immense value to the recording industry, because without them it wouldn't be possible to process some essential functions for recording and editing music, data storage, as well as "smart" technologies that allow the consumption of streaming music, among others.

## **3. Intellectual property instruments applied to the music industry**

### **3.1 geographic Indication**

The term geographical indications was inaugurated in the Industrial property law 9,279/96 and defined in your Art. 176 "the indication of origin geographical indication or appellation of origin", which in your time are defined by Art. 177 "indication of origin is considered the geographical name of a country, city, region or location of your territory, which has become known as a center of extraction, production or manufacture of a given product or particular service" and Art 178 "designation of origin is considered the geographical name of a country, city, region or location of your territory, designating a product or service whose qualities or characteristics are exclusively or essentially to the geographical environment, including factors natural and human. ".

To the present day, there has been no request for geographical indication related to the music industry, however, the Art. 177 gives opening to provide services, provided that the geographical name of a country, city, region or location of your territory, which has become a reference. Brazil recently granted your first indication of origin to a type of service: the porto digital (L, 2012)

In this way, even if it's not an intellectual property applied to the recording industry, there are no impediments that, at some point, there's the obvious recognition of particular region, State or city as a reference in particular service related to phonography.

### **3.2 Cultivars**

In Brazil, are the new protection their cultivars or varieties essentially derived, of any genres or plant species, as well as those which have already been offered for sale prior to the date of the request, followed some cumulative conditions laid down in Art. 4 of law No. 9,456 (BRAZIL, 1997).

Plant varieties protection lasts for 15 years from the date of grant of the Provisional Protection Certificate "with the exception of vines, forest trees and fruit trees, ornamental trees, including, in each case, your rootstock, for which the duration will be 18 years ", according to the Ministry of agriculture (AUSTRALIA, 1997).

Cultivars are not objects of protection related to the music industry, because the well protected no affinity with the music market.

### **Conclusion**

Throughout the work, one could understand that the music industry if worth of most intellectual property rights covered. Note that the evolution of its mechanisms, products, business models and services, over

the years, the consumption of music were progressively being democratized.

Thanks to the innovations of the last decade, with the popularization of the internet, the emergence of digital music formats, as well as the forms of such media sharing, consumption of CDs released by record companies became obsolete with the industry music went into decline, being forced to find ways to adapt and reinvent yourself in front of the new patterns of behaviour and consumption.

The changes caused debate on the conflicts between the society and culture offer proper remuneration of copyright holders and their agents and intermediaries. More than ever should think about a new model of management of rights and reform of the legal system, to reconcile the right of the authors (and other actors of the Phonographic Industry) with the right of consumers, already accustomed to free music environment online, via streaming consumption.

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