Cass County Music Co. v. Muedini, 55 F.3d 263 (7th Cir. 1995)

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I. INTRODUCTION

In Cass County Music Co. v. Muedini, the Seventh Circuit reversed a district court ruling and held that a restaurant stereo system, consisting of a single receiver and nine speakers did not qualify under the Copyright Act’s “homestyle exception.”

Cass County Music Co. examined the scope and applicability of 17 U.S.C. § 110(5) of the Copyright Act — the “homestyle exception” — in the relatively banal context of a small-town family restaurant playing copyrighted background music as a means of enhancing the patrons’ dining pleasure. More specifically, the central issue was whether a restaurant owner was protected by the federal copyright statute’s homestyle exemption which immunizes anyone who publicly performs a copyrighted work by way of transmitting equipment (e.g., stereos commonly found in a listener’s home). In addressing the homestyle exception, the Seventh Circuit discussed important questions such as the scope of and limitations on a copyright owner’s exclusive statutory right to control the public performance of the copyrighted work. Furthermore, the court addressed the elements that are necessary for a cognizable infringement claim based on public performance rights.

II. BACKGROUND OF STATUTORY SCHEME

The Copyright Act of 1976 grants copyright holders the exclusive right to control the public performance of their works.1 The statutory definition of public performance encompasses the playing of a radio or television broadcast in a business establishment.2

Section 101 of the Copyright Act provides in relevant part:

To perform or display a work “publicly” means . . . (2) to transmit or otherwise communicate a performance or display of the work to . . . the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.3

An important limitation on this statutorily vested exclusive right to control public performance of a copyrighted work is found in Section 110(5) of the Act which exempts small commercial establishments that play radio or television

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broadcasts on a "homestyle receiving apparatus." Section 110(5) provides:

Notwithstanding the provisions of section 106, the following are not infringe-
ments of copyrights: . . . (5) communication of a transmission embodying a
performance or display of a work by the public reception of the transmission on
a single receiving apparatus of a kind commonly used in private homes, unless
— (A) a direct charge is made to see or hear the transmission; or (B) the trans-
mision thus received is further transmitted to the public . . . . 4

III. CASS COUNTY OPINION

A. Facts

On March 13, 1992, two investigators employed by the American Society of
Composers, Authors, and Publishers ("ASCAP") dined at the Port Town Family
Restaurant located in Racine, Wisconsin and owned by the defendant, Muedini.
During the course of the evening, the investigators heard six songs, for which the
copyrights were held by ASCAP members, played over the restaurant’s sound
system. The source of the music was a radio broadcast of WMYX-FM, a Mil-
waukee station. An ASCAP licensee, WMYX was prohibited from granting to
others any right to perform publicly any of the musical compositions licensed
under the agreement or from authorizing any receiver of any radio broadcast to
perform publicly or reproduce the broadcast in any manner. For a six year period
ranging from May 1985 until December 1991, ASCAP repeatedly and unsuccess-
fully urged the defendant restaurant to obtain an ASCAP license in order to
legally play background music. The plaintiffs — six ASCAP member music
companies that owned copyrights to the six songs in question — brought an
infringement action based on the defendant’s unlicensed public performance of
the six copyrighted musical compositions. The plaintiffs requested an injunction
prohibiting further performances, $1,000 damages for each infringement and
costs, including reasonable attorneys’ fees.

The defendant failed to respond to the complaint and the plaintiffs moved for
entry of a default judgment. After reviewing applicable case law and authorities,
the district court refused to enter a default judgment in favor of the plaintiffs and
held that the defendant restaurant owner was statutorily exempt from the Act’s
requirement that he obtain a license to play copyrighted works. The plaintiffs’
appealed.

B. Court’s Analysis

The issue facing the Seventh Circuit in the Cass County Music Co. case was
whether the defendant could seek protection from an infringement action by
relying on section 110(5) of the Copyright Act which provides for an exception
for small commercial establishments that play radio or television broadcasts. The
Seventh Circuit, which presumed true all of plaintiffs’ well-pleaded facts, re-

5. Id.
versed the district court and held that the defendant restaurant's stereo system was not the kind of system commonly used in a private home and denied "homestyle exception" protection to the defaulting defendants.

In examining the contours of the homestyle exception to the Copyright Act's provisions concerning an owner's exclusive right to control public performances, the Cass County Music Co. court discussed two prior decisions which elucidated the interplay between the right to public performance and the homestyle exception. The court noted that Congress included the small business exception in response to the Supreme Court's decision in Twentieth Century Music Corp. v. Aiken.6 The court then applied the four-part test delineated in Broadcast Music, Inc. v. Claire's Boutiques, Inc.7 The court focused their analysis on the second prong of the Claire's Boutiques test — whether the receiving apparatus used by the defendant was a kind commonly used in a private home. Applying a totality of the circumstances test which determines whether a given sound system qualifies for homestyle protection on a case-by-case basis, the court held that the defendant's apparatus was comprised of non-homestyle components and possessed a level of technical complexity which was uncommon in private home stereo systems. To demonstrate the convoluted nature of the defendant's sound system and thus illustrate that the system was comprised of non-homestyle equipment, the court noted that the Port Town music system was comprised of a receiver, a separate control panel containing five selector switches, nine speakers recessed into the dropped acoustic tile ceiling and concealed wiring. The court further noted that system could be augmented to power up to forty speakers, thirty-six speakers more than the receiver was designed to handle without overloading. The court bolstered its holding by pointing to dictum in Aiken which labelled a single-receiver four-speaker system the "outer limit" of the homestyle exception.8 The court further noted that the focus of the test as enunciated in Claire's Boutiques must be on "whether the system, as installed and operated, is commonly found in homes."9

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6. 422 U.S. 151 (1975) (In Aiken, the Supreme Court held that a restaurant owner's simple act of turning on a radio for the listening pleasure of restaurant patrons did not constitute a performance for which a license might be required. In response to Aiken, the Supreme Court expanded section 110's definition of "performance" to include playing works by means of a device such as a radio. Id. at 162.

7. 949 F.2d 1482 (7th Cir. 1991). In Claire's Boutiques, the Seventh Circuit, using Aiken as a starting point, analyzed section 110(5) as well as its legislative history in deciding whether an apparel store chain infringed copyrighted material by playing background music through a sound system that was comprised of a single 5-watt stereo receiver, an indoor antenna and a speaker wire. In holding that such a system qualified for the homestyle exception, the Seventh Circuit in Claire's Boutiques enunciated a four-part test for applying the section 110(5) exception: "the exemption is available only if (1) a single receiving apparatus is used, (2) the single receiving apparatus is of a kind commonly used in private homes, (3) the transmission is provided free of charge, and (4) the transmission is not 'further transmitted' to the public." Id. at 1489.

8. See Twentieth Century Music Corp. v. Aiken, 422 U.S. 151 (1975).

9. Cass County Music Co. v. Muendini, 55 F.3d 263, 269 (7th Cir. 1995).
IV. IMPACT

The holding in Cass County Music Co. is salutary in that it balances both the author’s right to fiscal remuneration and control over the dissemination of his work while also taking into account a restaurateur’s interest in providing a pleasant dining atmosphere for his patron’s by means of background music. The court also noted the systemic enforceability problems that would undoubtedly arise if there were no limits on an author’s right to control public performances of his/her works. In Cass County Music Co., the Seventh Circuit lucidly portrayed the homestyle exemption as a fair and workable limitation on an author’s public performance rights. The court accurately delineated the policies behind and elements of the homestyle exemption and described when that exemption can be invoked to serve as a limitation on an author’s otherwise exclusive right to control public performance of his work. The court’s gloss on the four-part test from Claire’s Boutiques adequately showed why the sound system at issue did not merit homestyle exemption.

The homestyle exemption test applied by the Claire’s Boutiques court, and as modified by the Cass County Music Co. decision, is likely to have a positive impact on copyright jurisprudence and further the policies of copyright law. First, in Cass County Music Co., the court’s formulation of a fact-based case-by-case analysis is welcome because it will provide a court with the necessary flexibility to analyze future homestyle defenses to infringement claims — in the ever-evolving sphere of sound technologies, courts should be careful not to adopt hard and fast rules as to what kinds of systems are commonly found in homes. Secondly, the court’s test is likely to breed beneficial results in that it will likely encourage establishments like the Port Town Family Restaurant to become licensees of ASCAP, which will in turn disperse licensee fees to its performing members and thus keep alive the incentive for an artist to continue creating music and afford the author a measure of control over the dissemination of his/her work(s). On this point, it is worth noting that in the course of its opinion, the Cass County Music Co. court showed that becoming an ASCAP licensee is anything but economically burdensome as the licensing fee for a restaurant like the defendant’s is $327 per year (or just over $25 a month).

V. CONCLUSION

The Cass County Music Co. decision struck a balance between an author’s right to monetary compensation for the unauthorized public performance of his work and a restaurant owner’s interest in providing a pleasant dining atmosphere for his patrons. By vindicating the authority of ASCAP and discussing the relatively simple procedural requirements for becoming an ASCAP licensee, the Seventh Circuit evinced a firm pro-copyright holder stance. The impact of the Cass County Music Co. decision on copyright jurisprudence is clear — if restaurants (or any similar consumer establishments) transmit copyrighted music through a sound system possessing technical complexity which is not commonly found in one’s home, the store/restaurant owner will be held in violation of the federal Copyright Act if they are not already ASCAP licensees.
By providing a workable test for determining when a given sound system qualifies for homestyle exemption, the Cass County Music Co. court struck the appropriate balance between the competing interests. The court's fact-specific inquiry which centered largely on the technical complexity and capabilities of a sound apparatus will further the aims of copyright law by encouraging businesses with convoluted systems to become licensees of ASCAP so that they can provide background music to their patrons free and clear of any legal hurdles.

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