


Copyright Protection for Songs Uploaded to the Spotify Digital Music Application Without Permission

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Abstract

Introduction: Copyright holders can and have the right to determine who can use their work or not. However, Uploading songs by Spotify application users can unknowingly trigger copyright infringement.

Purposes of the Research: To examine the legal relationship between the Spotify application and copyright holders and the form of copyright protection for songs uploaded on the Spotify application without permission.

Methods of the Research: The research method used in this writing is the normative legal research method with a legislative approach, case approach and conceptual approach.

Results of the Research: The legal relationship between the Spotify Music application and the Copyright Holder is based on a license agreement made in the form of an authentic deed and the form of legal protection of the creator's rights against uploading songs on the Spotify Music application without permission can be protected preventively and repressively. However, the most effective form of legal protection to be applied to this problem is the form of repressive legal protection.

Keywords: Legal Protection; Creator's Rights; Spotify.

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INTRODUCTION

Nowadays, intellectual property rights are one of the most important components in supporting economic growth in the Indonesian nation. This must be the focus of attention in boosting the economy in Indonesia. Article 28 letter G of the 1945 Constitution stipulates that every person has the right to protection of themselves, their families, and the community for their honor and dignity and property under the control of the person or individual. In this case, an individual or community of the Republic of Indonesia has the right to receive protection from the state for all rights they have. The rights referred to in this case are intellectual property rights which include: copyright, patents, industrial designs, trademarks and other protection for intellectual works produced by individuals or groups of people. This is because intellectual property rights can be studied through various perspectives, one of which is the economic perspective. Through an economic perspective, it can show a study of intellectual property which is an object of wealth that can be negotiated through economic transactions to meet human economic needs.¹ Intellectual

¹ OK Saidin, *Aspek Hukum Hak Kekayaan Intelektual* (Jakarta: Rajagrafindo Persada, 2015), p. 1.

Property Rights (abbreviated as IPR) are classified as individual property rights, namely intangible property rights. This is in line with the opinion explained by Mahadi regarding what is stated in Article 499 of the Civil Code (abbreviated as KUHPerdata) regarding rights as immaterial objects. Article 499 of the Civil Code states that goods are every object and every right that can be the object of property rights. The goods referred to in Article 499 of the Civil Code are material objects (*stoffelijk voorwerp*), while rights are immaterial objects.²

Copyright is also considered as movable property so that it can be transferred, either in whole or in part, due to inheritance, grant, endowment, will, written agreement, or other reasons that are permitted in accordance with the provisions of statutory regulations,³ in the transfer of copyright, an application for registration must be submitted to the Directorate General of Intellectual Property (abbreviated as Dirjen IP) and announced in the official gazette of the Directorate General of IP. Copyright is an immaterial object or an intangible, non-moving object that has economic value, copyright is regulated in "Law Number 28 of 2014 Concerning Copyright" (Copyright Law). Meanwhile, related to creations, it is regulated in Article 1 Paragraph (3), which broadly states that a Creation is the result of every work of a creator that shows purity in the fields of science, art and literature which is obtained from the results of thought power that arises from the mind, imagination, intelligence, skills, inspiration or expertise which is expressed in a real way.

Copyright is defined as an exclusive right consisting of moral and economic rights, as regulated in Article 4 of the Copyright Law. The meaning of exclusive rights is the meaning that is intended for the creator, so that no other party can use these rights without the creator's permission. Copyright holders who are not creators only have part of the exclusive rights in the form of economic rights. Economic rights are the right to be able to use a creation for commercial purposes or to obtain economic benefits from the creation. in the sense that the rights that can be transferred, such as the right to announce and the right to reproduce. Economic rights cannot be set aside for a creator in enjoying his creation and if someone else reproduces a creation without the knowledge and permission of the creator, then that person has violated the economic rights of the creator. While moral rights are absolute rights in the creator, meaning rights that can be transferred, such as the right to prohibit making changes to the creation. The copyright holder can and has the right to determine who can use his work or not. Furthermore, the affirmation of the regulation of copyright infringement is stated in Article 9 Paragraphs (2) and (3) of the Copyright Law which emphasizes that "every person who exercises economic rights as referred to in Paragraph (1) is required to obtain permission from the creator or copyright holder, then Paragraph (3) emphasizes again that "every person who without permission from the creator or copyright holder is prohibited from duplicating and/or using the creation commercially.

METHODS OF THE RESEARCH

Johnny Ibrahim expressed his views on the normative legal research method, which is a scientific research procedure to find the truth based on legal logic from a normative

² Khairil Fahmi, "Aspek Komersialisasi Kekayaan Intelektual Dalam Hukum Perikatan," *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 2, no. 3 (2021): 428–46.

³ Muchtar A H Labetubun and Sabri Fataruba, "Peralihan Hak Cipta Kepada Ahli Waris Menurut Hukum Perdata," *SASI* 22, no. 2 (2016): 1–11, <https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/163>.

perspective. The scientific logic that is stable in normative legal research is built on the scientific discipline and working methods of normative legal science, which is legal science whose object is law itself.⁴ The type of research used is normative legal research. A normative writing must certainly use a statutory approach (Statute Approach), because what will be studied are various legal regulations that are the focus and central theme of a study. This type of research is intended to obtain normative clarity by identifying and analyzing regarding copyright protection.

RESULTS AND DISCUSSION

A. Using Spotify as a Music Streaming Application

Spotify is a platform that offers music streaming services, allowing its users to access millions of songs, podcasts, and short videos from various musicians and genres digitally. Daniel Ek and Martin Lorentzon proposed this idea in 2005. Spotify was launched in October 2008 as an effort to combat digital piracy and provide easy and practical access for users to enjoy their favorite music anywhere and anytime.⁵

Performing right or the right to announce the creation of songs and music can be done through the internet media. Indirectly, the announcement of songs and music can be done by uploading the creation of songs and music into a music streaming application, in this case the author will discuss the Spotify music application. Over time, the development of digital music has been increasingly rapid, starting since the MP3 format was introduced throughout the world. Then cloud-based music streaming services came and slowly began to be popular. Of course, music streaming services come with various conveniences. The reason people like music streaming services is because of their practical and more efficient nature. Music streaming applications are increasingly popular with the Spotify Music application where people around the world are very fond of this application. Spotify Music is a music streaming company founded in 2008 which is claimed to be the most popular audio streaming service in the world with 406 million users, including 180 million subscribers, in 184 Markets. The Spotify Music application can be used on various platforms or devices ranging from smartphones, desktops, tablets, PlayStations, Xboxes, smart TVs, to Bluetooth-based audio devices. To be able to use this application, users must first download it. Spotify Music has a service commonly known as Freemium, where users are allowed to enjoy the services of the Spotify Music application for free with ads, or subscribe for a fee and free of ads. Spotify Music application users in various activities they do, such as when they are on public transportation, driving, working, exercising, studying, and when they wake up. In addition, the tendency of Spotify Music users is people who are very open to brands and technology. Among them are people who have a tendency towards social media, who use a new product earlier than others, who are always open to new technologies, and people who tend to recommend new products to others. In addition, Spotify Music users tend to like attending music shows.⁶

⁴ Johnny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif* (Malang: Bayu Media Publishing, 2006), p. 302.

⁵ Spotify.com, "Spotify Terms of Use," [www.spotify.com](https://www.spotify.com/us/legal/end-user-agreement/#4-content-and-intellectual-property-rights), 2023, <https://www.spotify.com/us/legal/end-user-agreement/#4-content-and-intellectual-property-rights>.

⁶ S. Yollis Michdon Netti and Irwansyah, "Spotify: Aplikasi Music Streaming Untuk Generasi Milenial," *Jurnal Komunikasi* 10, no. 1 (2018): 1-16.

There are several packages to enjoy the Spotify Music application, namely as follows:⁷ a) Free service (Spotify Free), where users can listen to music for free, but in the process of playing the music there are advertisements in the form of audio and display advertisements; b) Paid service (Spotify Premium), where users can enjoy this application by subscribing and paying a certain amount of money. The cost of subscribing to Spotify Premium is as follows: 1) Individual Plans: with a subscription price of Rp. 49,000,- /month; 2) *Spotify Premium Duo*: with a subscription price of Rp 71,490,-/month. This subscription consists of 2 separate premium accounts; 3) *Spotify PremiumFamily*: with a subscription price of Rp 86,900,-/month. This subscription consists of 6 separate premium accounts; 4) *Premium for Students*: with a subscription price of Rp. 27,500,- /month.

The rapid development of the internet has also given birth to new ideas for creators to introduce their work. In introducing their work, creators can use conventional methods to modern (digital) methods. Especially in the field of songs and music, creators prefer to introduce their work through music streaming applications, no longer by selling vinyl records, CDs, cassettes, and so on. One of the reasons they moved from conventional methods to modern methods is the ease of accessing their work, just by downloading 1 (one) application, people can listen to so many songs or music.

Based on the explanation regarding the use of the Spotify application above, it can be concluded that with the advancement of technology, the presence of the Spotify application is a digital music platform that is very practical to use for application users and is very useful for songwriters to promote or disseminate their work in the form of songs, short videos, and podcasts that can be watched or listened to by other people around the world.

B. Connection Law Between Spotify Application Parties and Copyright Holders

According to Soeroso, a legal relationship is a relationship between two or more legal subjects, in this legal relationship the rights and obligations of one party are confronted with the rights and obligations of the other party. Law as a collection of regulations governing social relations grants a right to a legal subject to do something or demand something that is required by that right, and the implementation of the authority/rights and obligations is guaranteed by law. Every legal relationship has two aspects, namely: in terms of *bevoegdheid* (power/authority or rights) with its opposite *plicht* or obligation. The authority granted by law to a legal subject (person or legal entity) is called a right.⁸

Regarding this legal relationship, Logemann as quoted by Soeroso argues that in every legal relationship there is a party that is authorized/entitled to request performance called *prestatie* subject and the party that is obliged to perform the performance is called *plicht* subject. Legal relationships have 3 elements, namely:⁹ 1) The existence of people whose rights/obligations are opposite to each other: a) A sells his creative work to B; b) A has the right to request payment from B; c) B is obliged to pay A; d) B has the right to request the creative work after being paid. 2) The existence of an object that applies based on the rights and obligations above (in the example above the object is a song); 3) The existence of a relationship between the rights owner and the obligation bearer or a relationship over the

⁷ Patrick Leu, "Number of Spotify Premium Subscribers Worldwide from 1st Quarter 2015 to 3rd Quarter of 2024," [www.statista.com, 2024](https://www.statista.com/statistics/244995/number-of-paying-spotify-subscribers/), <https://www.statista.com/statistics/244995/number-of-paying-spotify-subscribers/>.

⁸ R Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 2015).

⁹ *Ibid*, p.270

object in question: a) A and B enter into a licensing agreement for the song copyright; b) A and B as rights holders and obligation bearers; c) The song is the object in question.

The terms of legal relations are:¹⁰ 1) The existence of a legal basis, namely legal regulations that regulate the legal relationship; 2) The emergence of a legal event: a) The legal basis that regulates each party stipulates that party A has an obligation to deliver goods/objects and conversely party B is obliged to pay the purchase price; b) because of the agreement, a legal event arises, namely a legal act whose consequences are regulated by law.

The large number of Spotify Music users makes the author wonder whether the welfare of creators is fulfilled with such a large application, then for example whether someone who uploads a song to this application can really be said to be the original creator and also whether there is a binding legal relationship between the creator and the Spotify Music application so that when the creator who uploads his/her creative work to the application really gets legal certainty regarding his/her creative work? Therefore, the author wants to dissect and explain the process of how creators can upload their creative work to the application to how royalties can be received by the creator. This will be explained as follows: To be able to put creative work in a music streaming application, in this case Spotify Music, creators cannot just upload it themselves. Instead, they have to go through several steps to be able to upload it to Spotify Music. Spotify Music has a policy that anyone who wants their song to be loaded on Spotify Music must have a label or publisher first,¹¹ in this case, the original creator must have a label or publisher, let alone someone else who uploads someone else's song without permission, then they must immediately ask for permission from the original creator. This label or publisher will later work to handle licensing and distribution issues to Spotify Music. The creator or artist is someone who has an obligation to create a work that then has the right to receive royalties. Copyrighted works must first pass through the distributor label before they can be loaded on Spotify Music. The amount of royalties received by the creator or artist is based on an agreement with the distributor label. Then what is meant by a Distributor Label is a company that will manage copyright licenses that work directly with Spotify Music. The distributor label is responsible for distributing the work to music streaming applications such as Spotify Music. This distributor label has the right to receive distribution results, the amount of which is agreed upon in the agreement.

In Indonesia itself, there is actually an example of a music distributor, namely Netrilis. Music distributors, similar to label distributors, are tasked with managing copyright licenses and royalties and distributing creative works to music streaming applications such as Spotify Music. Indeed, there are many terms in music streaming applications that even the author only understood after doing research. What needs to be remembered is that the party that distributes to music streaming applications is a music distributor, and the music distributor does not act as a publisher but rather as a party trusted by the Digital Service Provider (in this case Spotify Music) to complete the content on its platform.¹² As previously

¹⁰ *Ibid*, p.271

¹¹ Rachmayani Dewi, "Perjanjian Lisensi Hak Cipta Atas Lagu Antara Pencipta Lagu Dengan Produser Rekaman Untuk Melindungi Hak Ekonomi Para Pihak," *Syiar Hukum: Jurnal Ilmu Hukum* 16, no. 2 (2018): 182-206, <https://doi.org/10.29313/sh.v16i2.4883>.

¹² Netrilis.com, "Netrilis Music Distribution Agreement," www.netrilis.com, 2024, <https://www.netrilis.com/p/netrilis-music-distribution-agreement.html>.

explained, works of art that want to be published on Spotify Music must first go through a label/music distributor. Netrilis provides a submission column to upload works of song and music that want to be forwarded to Spotify Music. Artists upload the work by filling in some information related to the work, such as: release type, artist or band name, song title for single or album title, additional artists, music genre, year of production of the work, language used in the work, whether there is explicit content or not, then upload the work in a file format with certain provisions. After filling out the submission form, Netrilis will conduct a review of the information and work that will later be forwarded to the music streaming application. The results of the review can be accepted and can also be rejected. After Netrilis has completed the review, the results of the review will be sent to the artist along with the distribution rate that must be paid by the artist via email. After the payment is successful and the work passes, the work will be published immediately on various music streaming applications, one of which is Spotify Music.

Distribution of copyrighted works to music streaming applications carried out by music distributors is not simply done without an agreement. Artists and music distributors must first reach an agreement by making a license agreement. The license agreement is made with the aim that the music distributor obtains a license for the work so that it has the right to be able to distribute the artist's work to music streaming applications such as Spotify Music. The license agreement as regulated in Article 7 paragraph (2) letter d of Government Regulation No. 36 of 2018 concerning the Recording of License Agreements, that the provisions regarding the license are exclusive, non-exclusive, including sublicenses. According to this Article, a license agreement must contain at least several things, namely: a) Date, month, year, and place where the license agreement was signed; b) Names and addresses of both parties (license giver and licensee); c) Object of the agreement; d) Provisions regarding the license that are exclusive or non-exclusive, including sublicenses; e) Term of the agreement; f) Area of validity of the agreement; g) Party that makes the annual fee payment for the patent.

The meaning of sublicense is a license granted by the licensee to another party to carry out part or all of the license owned with the consent of the licensor. In this case, Netrilis as the recipient of a non-exclusive license from the creator/artist, is tasked with distributing the creator/artist's work into a music streaming application (in this case Spotify Music). This means that in order for Spotify Music to utilize the creator/artist's work, it must require a license granted by the non-exclusive license holder (Netrilis) in the form of a sublicense. So, Spotify Music holds a sublicense granted by Netrilis as the non-exclusive license holder.

CONCLUSION

The law between the Spotify Music application and the Copyright Holder is based on a license agreement made in the form of an authentic deed. Where in the agreement, Artists through Netrilis can grant licensing rights to Spotify Music so that the song content can be loaded on Spotify Music, and vice versa to Netrilis, Artists also grant licensing rights to their work to Netrilis so that it can then be distributed to music streaming applications through a licensing agreement. The form of legal protection of creators' rights against uploading songs to the Spotify Music application without permission can be done preventively and repressively. However, the most effective form of legal protection to be applied to this problem is the form of repressive legal protection. The reason is because there

have been many violations of song copyright. So to emphasize copyright regulations, it is necessary to enforce repressive legal protection in the form of blocking access, closing accounts, and/or deleting content to pay compensation fines. In order to ensure legal certainty for the Creator and their rights can be fulfilled.

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