

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

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In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

**DECLARATION OF JOSEPH J.  
CASSIOPPI**

Decedent.

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I, Joseph J. Cassioppi, declare and state as follows:

1. I am a shareholder at Fredrikson & Byron, P.A. (“Fredrikson”), counsel for Comerica Bank & Trust, N.A. in its capacity as personal representative (the “Personal Representative” of the Estate (the “Estate”) of Prince Rogers Nelson (the “Decedent”).

2. Attached hereto as Exhibit A is a true and correct copy of a witness statement executed by Luca Trevisan in connection with the Personal Representative’s lawsuit against Warner Chappell Music Italiana S.R.L. (“Warner Chappell”) in the United Kingdom.

3. Attached hereto as Exhibit B is a true and correct copy of a witness statement executed by Steven Mark Tregear in connection with the Personal Representative’s lawsuit against Warner Chappell in the United Kingdom.

4. Fredrikson, on behalf of the Personal Representative, sent a settlement proposal to the U.S. counsel for Warner Chappell on July 9, 2018.

5. The Personal Representative has kept the Heir Group regularly informed regarding the status of the disputes with Warner Chappell and related parties, including as part of its regular litigation updates at Heir Meetings. That included updates at the Heir Meetings on November 17,

2020 and January 19, 2020. Attached hereto as Exhibit C is a true and correct copy of an email sent by the Personal Representative to the Heir Group on January 19, 2021, providing an update on the status of the litigation. Attached hereto as Exhibit D is a true and correct copy of an email sent by the Personal Representative to the Heir Group on March 22, 2021 related to a memorandum of understanding.

6. Sharon, John, and Norrine Nelson, L. Londell McMillan, and Charles Spicer (the “Objectors”) challenge the legal fees charged by Fredrikson in connection with a meeting convened by Justice Gilbert on April 15, 2021. Although the agenda for the meeting was designated a confidential mediation communication, it required counsel for the Personal Representative to present on seven topics. Three days before the meeting, Norrine Nelson asked that the Personal Representative and counsel address two additional topics. In order to present on and discuss the nine topics, Mark Greiner, Karen Sandler Steinert, and I divided-up the subjects and we all attended the meeting.

7. Based on my experience litigating trust and estate matters, it is the standard practice in most probate matters in Minnesota to include attorneys’ and personal representative’s fees as part of an annual or final accounting.

8. Attached hereto as Exhibit E is a true and correct copy of a consolidated financial statement for the Estate and its controlled entities for the time period of February 1, 2020 through January 31, 2021.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.**

Dated: August 11, 2021

s/ Joseph J. Cassioppi  
Joseph J. Cassioppi

EXHIBIT A  
TO DECLARATION OF JOSEPH CASSIOPPI

**Luca Trevisan**  
**FIRST WITNESS STATEMENT**  
**FILED ON BEHALF OF THE CLAIMANTS**  
**LT1**  
**28 August 2020**  
**QB-2020-001827**

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

**B E T W E E N:**

- (1) **COMERICA BANK AND TRUST, N.A.**  
(as personal representative of the Estate of Prince Rogers Nelson)
- (2) **NPG MUSIC PUBLISHING LLC**
- (3) **NPG RECORDS INC.**
- (4) **UNIVERSAL MUSIC CORP.**
- (5) **SONGS OF UNIVERSAL, INC.**
- (6) **UNIVERSAL MUSIC PUBLISHING INTERNATIONAL LIMITED.**
- (7) **UNIVERSAL MUSIC PUBLISHING LIMITED**
- (8) **SONY MUSIC ENTERTAINMENT**

Claimants

- and -

**WARNER CHAPPELL MUSIC ITALIANA S.R.L.**

Defendant

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**FIRST WITNESS STATEMENT OF LUCA TREVISAN**

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I, Luca Trevisan, of via Brera 6, 20121 Milan, Italy will say as follows:

1. I am a lawyer enrolled in the bar of Milan since June 1982. I am also admitted to practice before the Italian Supreme Court of Cassation and before all high courts of Italy.
2. In 1993, I founded the law firm Trevisan & Cuonzo, specialised in intellectual property litigation. In my career, I have handled major landmark cases and managed multi-jurisdictional intellectual property disputes. I am regularly called by universities to host training courses on intellectual property and commercial law. I am a frequent speaker at conferences and regularly contribute to international legal journals. I am a member of AIPPI (the International Association for the

## TO DECLARATION OF JOSEPH CASSIOPPI

Protection of Intellectual Property), IBA (the International Bar Association), GRUR (the German Association for the Protection of Intellectual Property) and INTA (the International Trademark Association). I speak fluent English, German and French as well as Italian.

3. In 2016, I was instructed to represent the Estate of Prince Rogers Nelson in referral proceedings instigated by Warner Chapell Music Italiana S.r.l. (“Warner Italy”, the Defendant in these English proceedings) and by Mr Bruno Bergonzi and Mr Michele Vicino before the Court of Appeal of Rome. The Estate of Prince Rogers Nelson confirmed my appointment and I have represented the Estate ever since.
4. This witness statement has been prepared in writing in English with the assistance of the Estate’s English lawyers, Russells - following email and telephone communication with Russells.
5. I have been asked to give this witness statement in order to respond to those filed by Mr Matthew Blower and (in particular) Mr Giorgio Mondini, both dated 3 July 2020, in these proceedings. In particular, I respond to the suggestion made by both of those witnesses that the Italian proceedings involved a claim for “*worldwide copyright infringement*” and that those proceedings were (or are) therefore “*concerned with the infringement of non-Italian (including United Kingdom) copyright*”; so that “*if there were any particular defences which the Italian Defendants might have had to the claim for infringement of United Kingdom copyright, they could have advanced those in the Italian proceedings*” (see in particular paragraphs 9, 43, 52.1-52.2 and 54 of Mr Blower’s witness statement, and paragraphs 10 and 28-29 of Mr Mondini’s witness statement).
6. This suggestion is incorrect. As I explain below, (i) the claim in the Italian proceedings has only ever been advanced on the basis of Italian copyright law (see Section IV below), and (ii) that is moreover the only body of copyright law with which the Italian proceedings could *ever* have been concerned, since Italian jurisdiction was established on the basis of applying the criterion *forum commissi delicti* rather than the domicile of any of the defendants (see Sections III and V below). As the lawyer with conduct of the Italian proceedings on behalf of the defendants, I can confirm that I have never understood a claim to be being advanced under UK copyright law or any other foreign copyright law: only under Italian copyright law. I am therefore very surprised to see this suggestion advanced in the witness statements of Mr Blower and Mr Mondini. It is correct that the plaintiffs in Italy have advanced claims for worldwide *relief*, but the cause of action said to support such relief has only ever been Italian copyright law.

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7. There have been five key judgments in the Italian proceedings to date, which I understand have already been exhibited by other witnesses (both in the original Italian and in English translation):
- a. the first instance judgment no. 3330/2003 issued by the Court of Rome on 30 January 2003 (the “2003 First Instance Judgment”, also referred to by Mr Blower as the Initial Judgment) –pp. 4/14 of LT1 (English translation starting at p. 10);
  - b. the (partial) appeal judgment no. 548/2008 issued by the Court of Appeal of Rome on 11 February 2008 (the “2008 Court of Appeal Merits Judgment”, also referred to by Mr Blower as Judgment A) – pp. 15/34 of LT1 (English translation starting at p. 27);
  - c. the appeal judgment no. 6047/2012 issued by the Court of Appeal of Rome on 3 December 2012 (the “2012 Court of Appeal Quantification Judgment”, also referred to by Mr Blower as Judgment B) – pp. 35/69 of LT1 (English translation starting at p. 55);
  - d. the judgment no. 11225/2015 issued by the Supreme Court of Cassation on 29 May 2015 (the “2015 Supreme Court Judgment”, also referred to by Mr Blower as Judgment C) – pp. 70/154 of LT1 (English translation starting at p. 127); and
  - e. the referral judgment no. 4484/2018 issued by the Court of Appeal of Rome on 3 July 2018 (the “2018 Court of Appeal Referral Judgment”, also referred to by Mr Blower as Judgment D) - –pp. 155/169 of LT1 (English translation starting at p. 162).
8. I exhibit the main pleadings and briefs filed within the Italian proceedings, and particularly the pleadings and counter-pleadings filed in the framework of the proceedings connected to the 2018 Court of Appeal Referral Judgment, including the appeal filed by the Estate of Prince Rogers Nelson against that judgment before the Supreme Court of Cassation, at pp. 170/277 of LT1.
1. **THE ITALIAN PROCEEDINGS**
9. The proceedings which have been ongoing in Italy since 1995 led to the five judgments above. As matters stand under those judgments:
- a. the song “The Most Beautiful Girl in the World” (the “Prince Song”) by the artist known as Prince (full name Prince Rogers Nelson) constitutes, under the applicable Italian law and to the extent that will be later specified in paragraph 50.b below, plagiarism of the song “Takin’ Me to Paradise” (the “Italian Song”) by Mr Bruno Bergonzi and Mr Michele

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Vicino published by Edizioni Chapell S.r.l. (then Warner Chapell Music Italiana S.r.l., and hereinafter referred to as Warner Italy);

- b. the Estate of Prince Rogers Nelson has been ordered to refrain from any further use of the Prince Song;
- c. the Estate of Prince Rogers Nelson has been ordered to pay Warner Italy, as compensation for damages in the total amount of Euro 956,608 plus monetary revaluation and interest; and
- d. the Estate of Prince Rogers Nelson has been ordered to pay Bergonzi and Vicino the total amount of Euro 40,000 each, plus interest, as compensation for moral damages.

**A. Background: timeline of the Italian procedure**

10. The timeline of the proceedings can be summarised as follows:

10 July 1995	Writ of summons filed by Bergonzi, Vicino and Warner Italy
30 January 2003	2003 First Instance Judgment issued by the Court of Rome – claim rejected in full
12 March 2004	Appeal against the 2003 First Instance Judgment filed by Warner Italy before the Court of Appeal of Rome (Court of Appeal Docket no. 2848/2004)
15 March 2004	Appeal against the 2003 First Instance Judgment filed by Bergonzi and Vicino before the Court of Appeal of Rome (Court of Appeal Docket no. 2906/2004)
16 June 2004	The two appeals are joined
11 February 2008	2008 Court of Appeal Merits Judgment – decision on the merits of the appeal reversing the 2003 First Instance Judgment and issuing an injunction is issued prohibiting exploitation of the Prince Song in Italy; proceedings continue for the quantification of damages

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16 March 2009	Appeal against the 2008 Court of Appeal Merits Judgment filed by Warner Italy before the Supreme Court of Cassation (Supreme Court Docket no. 7388/09)
23 March 2009	Appeal against the 2008 Court of Appeal Merits Judgment filed by Prince before the Supreme Court of Cassation (Supreme Court Docket no. 7886/09)
26 March 2009	Appeal against the 2008 Court of Appeal Merits Judgment filed by Bergonzi and Vicino before the Supreme Court of Cassation (Supreme Court Docket no. 7699/09)
3 December 2012	2012 Court of Appeal Quantification Judgment – decision on the quantification of the damages for copyright infringement
30 May 2013	Appeal against the 2012 Court of Appeal Quantification Judgment filed before the Supreme Court of Cassation by Prince (Supreme Court Docket no. 14400/2013)
All appeals before the Supreme Court are joined together ex officio	
29 May 2015	2015 Supreme Court Judgment – upholding the 2012 Court of Appeal Quantification Judgment, and reforming the 2008 Court of Appeal Merits Judgment in relation to the enforceability of the injunction and the moral damages suffered by Bergonzi and Vicino
8 July 2015	Referral proceedings instigated by Warner Italy (Court Docket no. 5363/2015) in order to determine the merits of the matter in line with the ruling of the Supreme Court of Cassation, including as to the enforceability of the injunction
25 September 2015	Referral proceedings instigated by Bergonzi and Vicino (Court Docket no. 5518/2015) in order to determine the merits of the matter in line with the ruling of the Supreme Court of Cassation, including as to the ascertainment and

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	quantification of the possible moral damages allegedly suffered by Bergonzi and Vicino
21 April 2016	Prince passes away – all proceedings are stopped <i>ex officio</i>
18 July 2016	Bergonzi and Vicino resume referral proceedings against the Estate of Prince Rogers Nelson
6 September 2016	Warner Italy resumes referral proceedings against the Estate of Prince Rogers Nelson
19 April 2017	Referral proceedings are joined
3 July 2018	2018 Court of Appeal Referral Judgment) – repeating the statements of the Supreme Court of Cassation in relation to the injunction, and ascertaining and quantifying the moral damages in the amount of Euro 40,000 each
9 October 2018	Appeal against the 2018 Court of Appeal Referral Judgment filed before the Supreme Court of Cassation by the Estate of Prince Rogers Nelson (Court Docket no. 29619/2018 – proceedings <u>still</u> pending)

11. The proceedings have been ongoing for more than 25 years now and have not yet concluded. One of the primary reasons for the excessive length of the procedure in this case was the chronic slowness which affected the Court of Rome at the relevant time. I wish to underline that, in my recent experience, the normal course of action in copyright law is to have a final decision (after all appeals have been exhausted) in no more than 10-12 years in total.
12. Pursuant to Italian Law no. 89 of 24 March 2001 (Law 89/01) concerning the reasonable duration of proceedings, the normal duration of proceedings should be no longer than three years in first instance, two years in appeal proceedings and one year in the proceedings before the Supreme Court plus another year in the referral proceedings (i.e., no more than seven years in total). Law 89/01 (also known as the Pinto Act) was introduced in order to deal with the widespread problem of excessively lengthy court proceedings in Italy and provide a remedy in national law in respect of such proceedings, so that claimants would not need to lodge a complaint with the European Court of Human Rights in order to obtain compensation.



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**B. Current status of the Italian proceedings**

13. As is apparent from this timetable above, the proceedings are still ongoing and are currently pending before the Supreme Court.
14. With the appeal of 9 October 2018 (LT1 pp. 206/277 – English translation starting at p. 246), the Estate of Prince Rogers Nelson contested the 2018 Court of Appeal Referral Judgment, raising seven grounds of appeal concerning:
- a. procedural mistakes made by the Court of Appeal when assessing the claims of Bergonzi and Vicino (first and second grounds) and of Warner Italy (fourth and fifth grounds);
  - b. the erroneous assessment of the claims of Bergonzi and Vicino, in that no actual verification has been carried out with respect to the moral damages they claim (sixth ground); and
  - c. the lack of clarification on the scope of the assessment of the copyright infringement (seventh ground).
15. The seventh ground of appeal (paragraphs 86-94, LT1 pp. 231/233 (IT), (EN) pp. 271/273), by which the Estate requested that the Supreme Court clarify the scope of the ascertainment of the copyright infringement, is particularly relevant here. The Estate asked that the Court confirm that such ascertainment was limited to the Italian territory, in particular given that (i) it is an absolutely settled principle of intellectual property that the infringement must be assessed according to the law of the State in which the infringement took place, and only Italian law was applied in this case (see paragraph 87 of the appeal); and (ii) the Italian Court took jurisdiction based on the criterion of the *forum commissi delicti* and could not ascertain an infringement that allegedly occurred outside the Italian territory (see paragraph 88 of the appeal). See paragraphs 29-33 below in this respect.
16. The decision of the Supreme Court against the 2018 Court of Appeal Referral Judgment is expected in no less than two years' time.

**II. THE RELEVANT LEGAL PROVISIONS**

17. I explain in detail below the matters which are in issue in the Italian proceedings. As context for that explanation, I first set out a brief factual summary of the relevant Italian legal provisions, concerning:

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- a. international private law (specifically, the criteria for identifying the applicable law in copyright matters);
  - b. jurisdiction and the consequent scope of the ascertainment carried out by the Judge; and
  - c. substantive copyright law regulating injunctions in case of copyright infringement.
- A. Relevant provisions on applicable law in copyright matters, and the principle of territoriality of copyright
18. The Italian legal system is a civil law system, based on a variety of sources that relate to each other in a hierarchical order.
19. Law no. 218 of 31 May 1995, entitled “System of private international law” (Law 218/95), is at the base of our analyses under a private international law perspective. Law 218/95 gathers the basic principles of the system of conflicts of laws in all the various matters: obligations, contracts, work, family and also, as here of interest, intangible assets. Law 218/95 entered into force on 1 September 1995 (technically after the Italian proceedings were commenced). Before Law 218/95, articles 17-31 of Royal Decree no 262 of 16 March 1942 regulated the basic principles of the system of conflict of laws in Italy. For the purposes of the Italian proceedings, however, the provisions of the 1942 Royal Decree corresponded to and are materially identical in their construction and application to the principles provided by Law 218/95. As a matter of fact, all parties in the proceedings and the Courts themselves in their judgments have referred to Law 218/95. It is therefore appropriate to refer to the provisions of Law 218/95 for the purposes of Italian domestic law.
20. The Italian domestic conflicts of laws rules are interpreted and applied without prejudice to the variety of international<sup>1</sup> and European<sup>2</sup> rules, which are in a higher hierarchical order than Law 218/95 and which, matter by matter, contain specific provisions for the solution of possible conflicts of law where they apply.

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<sup>1</sup> Article 2 of Law 218/1995 provides that “*The present law shall not prejudice the applications of international conventions in force in Italy.*” This implies that, where it applies, the Berne Convention overrides a contrary provision of the Italian Law.

<sup>2</sup> In the Italian legal system, in case of conflict between EU provisions and Italian provisions, the first overrides the second – the sole limit being the Italian Constitution. The source for this overriding value of the EU provisions is in Article 11 of the Italian Constitution, which provides that “*Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends*”.

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21. The following provisions identify the applicable law in copyright matters:
- a. Article 54 of Law 218/95: Law applicable to intangible assets: *“Rights based on intangible assets are regulated by the law of the State where they are used”*.
  - b. Article 8 of EC Regulation no. 864/2007 on the law applicable to non-contractual obligations (Rome II): *“The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.”*
  - c. Article 5 of the Berne Convention: *“(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention; (2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed; (3) Protection in the country of origin is governed by domestic law”*.
22. Article 54 of Law 218/95, Article 8 of Regulation (EC) no. 864/2007 and Article 5 of the Berne Convention all acknowledge the well-established **principle of territoriality of copyright**. That is, copyright protection is inherently territorial, and depends on the law of the state where such protection is sought. The assessment of the alleged infringement must be based on the specific national law applying in the location of the infringement, which may be different from the law of other countries. There are as many copyrights as countries where the good (in this case, the Italian Song) is used<sup>3</sup>.
23. As will be explained in more detail in Section IV below, the only law applicable to the Italian proceedings brought by Warner Italy, Bergonzi and Vicino is the Italian law of copyright, as they sought protection from infringement in Italy.

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<sup>3</sup> See JARACH-POJAGHI, *Manuale del diritto d'autore*, MURSIA, 2019, p. 364.

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**B. Relevant provisions on jurisdiction criteria**

24. The criteria according to which Italian judicial authorities may be seised are set out, once again, in Law 218/95 and in the 1968 Brussels Convention (subsequently followed by EC Regulation no. 44/2001 and now EU Regulation no. 1215/2012). The criteria concerning special jurisdiction contained in Section 2 of the Brussels Convention also operate in respect of defendant parties domiciled outside the EU (including in the United States of America), as these criteria have been transposed by Law 218/1995 and therefore operate beyond the original scope of effectiveness of the 1968 Brussels Convention<sup>4</sup>). Specifically:

- a. Article 3 of Law 218/95: Reach of jurisdiction: *"1. There is Italian jurisdiction when the defendant is domiciled or resident in Italy or has in Italy an agent authorised to appear in court for him/her in accordance with art 77 of the Code of Civil Procedure, as well as in the other cases provided by law. 2. There is also jurisdiction based on the criteria established by sections 2, 3 and 4 of Title II of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters and protocol, signed at Brussels on September 27, 1968, rendered effective in Italy by the law of June 21, 1971, No 804, and successive modifications in force in Italy, even if the defendant is not domiciled in a contracting state, where a subject matter covered by the Convention is involved. With respect to matters not covered by the Convention, if venue of a case before an Italian judge is proper then he/she also has jurisdiction thereof"*;
- b. Section 1, Article 2 of the 1968 Brussels Convention (see now Article 4 of EU Regulation no. 1215/2012): *"1. Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State. 2. Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State"*;
- c. Section 1, Article 3(1) of the 1968 Brussels Convention (see now Article 5(1) of EU Regulation no. 1215/2012): *"1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 6 of this Title."*; and

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<sup>4</sup> See Court of Milan, 15 February 2014 – see also Supreme Court Joint Division Decisions n. 22239 of 21.10.2009; n. 5090 of 27.2.2008; n. 2060 of 11.2.2003 and n. 5765 of S.U. 12-04-2012, according to which: *"for the purpose of determining the scope of Italian jurisdiction with respect to a defendant who is neither domiciled nor resident in Italy, the criteria set out in Sections 2, 3 and 4 of Title 2 of the Convention should be applied, even where the defendant is domiciled in a State not party to the Convention"*.

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- d. Section 2, Article 5(3) of the 1968 Brussels Convention (see now Article 7 of EU Regulation no. 1215/2012: “A person domiciled in a Contracting State may be sued in another Contracting State: [...] (3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur”.

C. Relevant provisions on injunctions and damage compensation in copyright matters

25. Copyright law in Italy is regulated by Law no. 633 of 22 April 1941, entitled “Protection of copyright and other rights connected to its exploitation” (Law 633/41).
26. Provisions contained in the Italian Civil Code and in the Code of Civil Procedure are also relevant in this matter, as they operate as background complementary rules supplementing the provisions contained in copyright law.
27. The provisions regulating injunction orders in copyright matters are:
- a. Article 156 of Law 633/41: “1. Any person having reason to fear the infringement of an exploitation right belonging to them under this Law, or who seeks to prevent the continuation or repetition of an infringement which has already occurred, either by the author or by an intermediary whose services are used for such infringement, may institute legal proceedings to ensure that his right be recognised and the infringement forbidden. When issuing the injunction, the Judge can fix a sum to be paid for each infringement or violation subsequently ascertained or for the delay in the enforcement of the injunction. [...] 3. The proceedings shall be governed by the provisions of this Section and by the provisions of the Code of Civil Procedure [...]”;
- b. Article 614 bis of the Code of Civil Procedure: “1. When ordering the performance of obligations other than the payment of a certain sum of money, the judge, unless this is manifestly unfair, shall, at the request of a party, establish an amount of money to be paid for any subsequent violation or non-compliance, or for any delay in the execution of the order. The order shall be enforceable for the payment of the sums due for each violation or non-compliance. [...] 2. The judge shall determine the amount of the sum referred to in the first paragraph taking into account the value of the dispute, the nature of the service, the quantified or foreseeable damage and any other useful circumstances.”
28. The provisions regulating damage compensation in copyright matters are:

- a. Article 158 of Law 633/41: *"1. Any person injured in the exercise of an exploitation right belonging to them may institute legal proceedings for obtaining, besides the payment of damages, the destruction or removal of the material constituting the infringement at the expenses of the author of the infringement. 2. The compensation due to the damaged party is liquidated in accordance to articles 1223, 1226, 1227 of the Civil Code<sup>5</sup>. The loss of profits is evaluated by the Judge in accordance to article 2056, second comma, of the Civil Code, also considering the income generated in breach of the copyright. The Judge can also liquidate the damages at a lump sum on the basis of at least the amount of the rights which should have been paid if the infringer had sought authorisation from the holder to use the right. 3. Moral damages are due too in accordance to article 2059 of the Civil Code."*
- b. Article 1223 of the Civil Code: *Damage compensation: "Damage compensation for non-performance or delay includes the loss suffered by the creditor as well as loss of profits, insofar as they are an immediate and direct consequence of the non-performance or delay."*
- c. Article 1226 of the Civil Code: *Equitable evaluation of the damage: "If the damage cannot be proven in its exact amount, it is settled by the judge with equitable assessment."*
- d. Article 1227 of the Civil Code: *Contributory negligence of the creditor: "1. If the negligence of the creditor contributed to causing the damage, the compensation is reduced according to the seriousness of the negligence and the extent of the consequences resulting from it. 2. The compensation is not due for damages that the creditor could have avoided using ordinary diligence."*
- e. Article 2056 of the Civil Code: *Damage assessment "1. The compensation due to the injured party shall be determined in accordance with the provisions of Articles 1223, 1226 and 1227. 2. The loss of profits is assessed by the judge with fair appreciation of the circumstances of the case."*

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<sup>5</sup> The wording of this article has been amended from time to time. The wording applicable in 1995 when proceedings were initiated was materially identical to and has been applied in the same manner as the current wording: *"Any person injured in the exercise of an exploitation right belonging to them may institute legal proceedings for the destruction or removal of the material constituting the infringement or for payment of damages."*

- f. Article 2059 of the Civil Code: Non-pecuniary damage compensation: “*Non-pecuniary damages are compensated only when law provides so.*”

**III. SCOPE OF JURISDICTION WHEN, IN A COPYRIGHT MATTER, A COURT IS SEISED ON THE BASIS OF THE *FORUM COMMISSI DELICTI* CRITERION**

29. Considering the above, anyone who wishes to bring action before the Italian courts to establish an infringement of their own copyright may do so either:
- a. on the basis that Italy is the domicile of the author of the alleged infringement (see Article 3(1) of Law 218/95); or
  - b. on the basis that Italy is the territory where the alleged infringement allegedly occurred, applying the criterion of the *forum commissi delicti* (see Article 3(2) of Law 218/95, referring to Section 2 of the Brussels Convention, and Section 2, Article 5(3) of the Brussels Convention).
30. In the first case, “*the court having jurisdiction for the defendant's domicile shall have full and exclusive jurisdiction over any dispute brought against the defendant and may give final judgments containing an order not to do so even if that order is to be enforced abroad*”<sup>6</sup>, the general criterion of the defendant’s domicile allows the plaintiff to sue the defendant also in relation to violations committed abroad. The copyright law to be applied in that case shall be the one provided by the relevant provisions of the Berne Convention (that is, in accordance with the principle of territoriality in copyright protection, the specific national law applying in the location of the infringement).
31. In the second case, a Judge seised based on the criterion of the location of the infringement (*forum commissi delicti*), which is a special criterion, will be entitled to ascertain and assess only the infringement which **occurred in that country** based on the national law where said infringement allegedly occurs (*lex loci commissi delicti*)<sup>7</sup>. This is confirmed by:
- a. Both Italian and EU case law (the latter of which is relevant here since the provisions of the Brussels Regulations mirror the provisions of the 1968 Brussels Convention, which are applicable even in a non-EU Case, as set out in paragraph 24.a above) establish that, when jurisdiction has been taken by applying the *forum commissi delicti* criterion,

<sup>6</sup> See Boschiero, *Il principio di territorialità in materia di proprietà intellettuale: conflitto di leggi e giurisdizione*, in AIDA, 2007, p. 78.

<sup>7</sup> See Boschiero, *Il principio di territorialità in materia di proprietà intellettuale: conflitto di leggi e giurisdizione*, in AIDA, 2007, p. 84.

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copyright violation is assessed only on a territory-by-territory basis. See Court of Bologna, Judgment no. 1549 of 10 June 2016: “with regard to copyright infringement, national courts have exclusive jurisdiction to deal only with damage caused in the territory of the Member State to which they belong”; see also ECJ 03-10-2013, C-170/12, *Pinckney*; see also ECJ 22-01-2015, C-441/13 *Hejduk*; ECJ 25-10-2011, C-509/09 and C-161/10, *eDate Advertising*; and ECJ 07-03-1995, C-68/93, *Shevill*).

- b. Article 156 of Law 633/1941 (see paragraph 27.a above). Under paragraph 1 of that Article, the power to grant an injunction may be invoked by any person who has reason to fear the infringement of “an exploitation right belonging to them **under this Law**”. Under paragraph 3 of that Article, injunctions are regulated solely by the Italian Copyright Law and by the Italian Civil Procedure Code.
  - c. Article 16 of the Berne Convention, relating to possible seizure of infringing copies of a protected work, which provides that “(3) *The seizure shall take place in accordance with the legislation of each country*”.
32. Accordingly, a Judge seized based on the criterion of the location of the infringement (*forum commissi delicti*) may rule and issue injunctions only with effect limited to the territory in which he/she exercises his/her jurisdictional power. Each country has its own copyright law, construed based on its own criteria, and limited in effect to the territory of the country in question because of the principle of territoriality of copyright. Such an injunction may call for enforcement measures in other states (which other states shall decide whether to grant in accordance with applicable EU and international law), but this does not mean that the injunction is converted into a cross-border injunction.
33. An example would be an injunction which prohibits exploitation of a copyrighted work in Italy and which has been granted against a defendant domiciled or who has assets in England. If the defendant breaches the injunction by carrying out acts in Italy prohibited by the injunction, the claimant might seek to enforce the injunction through the personal jurisdiction of the English court over the defendant, or against the defendant’s assets in England. Even if the claimant is able to do this, the injunction is still nevertheless an injunction relating only to exploitation within the territory of Italy: it does not become a cross-border injunction prohibiting exploitation in England simply because there is a need to enforce it against an entity or person domiciled or holding assets in England.



EXHIBIT A  
TO DECLARATION OF JOSEPH CASSIOPPI

**IV. THE INJUNCTION REQUESTED BY WARNER ITALY, BERGONZI AND VICINO WAS BASED EXCLUSIVELY ON ITALIAN COPYRIGHT LAW**

34. As to paragraph 29 of Mr Mondini's statement, I note as follows:

- a. In the present case the Court of Rome's ruling was (and all subsequent rulings were) made only on the basis of Italian copyright law, as a matter of fact. I explain this point in detail in this Section IV.
- b. Further, the Court of Rome was seised according to the *forum commissi delicti* criterion. Therefore, in line with the principles above laid out, the ruling and assessment made by the Court of Rome was necessarily limited to the territory of Italy, as a matter of law. I explain this point in detail in the following Section V.

35. I wish to first point out that in this case the action brought by Warner Italy always and exclusively dealt with the case at hand under an Italian perspective, applying exclusively Italian law.

36. Evidence of this is both in the pleadings filed by Warner Italy and in the subsequent ruling issued by the Courts:

- a. In the 1995 original writ of summons, Warner Italy (at that time, Edizioni Chappell), Bergonzi and Vicino jointly complained of the infringement of their rights under Italian copyright law, of authors of the work and holders of the rights deriving from it (page 5 of the 1995 writ of summons, p. 174 of LT1). Warner Italy's complaint related specifically to an alleged "*...infringement of the exclusive rights to exploit the work to which the author and their successors are entitled, as specifically indicated in Articles 12, 13, 14, 15, 16, 17 and 18 of the Italian Law on Copyright (L.D.A. – Law 633/41), as well as the right to authorship of the work as per Article 20 of the L.D.A.*" (translation from p.174 of LT1). The writ of summons does not include, and has never included, any claim under any body of copyright law other than Italian law.
- b. In the 2004 appeal filed by Warner Italy (p. 287 of LT1) which led to the 2008 Court of Appeal Merits Judgment (see paragraph 7.b above), all grounds of appeal were based on Italian copyright law. In particular, with respect to the alleged plagiarism, Warner Italy substantiated its claim on the basis of the Italian case law according to which:
  - i) plagiarism also exists when – as in this case – there is no identical copy of the work of others, but only a recognisable reproduction in a later work of the

## TO DECLARATION OF JOSEPH CASSIOPPI

- representative elements of another pre-existing work (p. 298/299 of LT1, which recalls Cass. Civ. 7077 of 5 July 1990 and the books *Manuale del Diritto d'Autore* by Jarach, and *Commentario Breve al Diritto della Concorrenza* by Marchetti and Ubertazzi, which both deal only with Italian law); and
- ii) the representative element in a light music composition would be the melody, and the main part the refrain (p. 299 of LT1, which quotes the Italian case law: Court of Rome 12 May 1993, Appeal Milan 19 July 1983 and 12 October 1999).
- c. On page 16 of the 2004 appeal (p. 302 of LT1), Warner Italy expressly asked the Court to issue an injunction pursuant to Article 156 of Law 633/41, thus confirming that the injunction should be ordered by applying exclusively Italian law and its criteria (see further paragraphs 27.a and 31.b above).
- d. The 2008 Court of Appeal Merits Judgment made multiple references to Italian copyright law and its case law, for verifying whether the Italian song was eligible for protection under Italian law (see p. 20 (IT), p. 30 (EN) of LT1 in which reference is made to Supreme Court decisions no. 24504 of 23 November 2005, no. 15496 of 11 August 2004, no. 11953 of 1 December 1993 and no. 5089 of 12 March 2004), for assessing the plagiarism and for condemning Prince Rogers Nelson (see p. 23 (IT), p. 32 (EN) of LT1, in which reference is made to Supreme Court decisions no. 3672 of 14 March 2001, no. 20925 of 27 October 2005, 581 of 12 January 2007).
- e. In the 16 March 2009 Appeal launched by Warner Italy before the Supreme Court of Cassation against the 2008 Court of Appeal Merits Judgment (p. 312 of LT1), Warner Italy asked the Court to issue an injunction "*in accordance to article 156 of the Italian law no. 633 of 22 April 1941*" (p. 321 of LT1).
- f. The 2015 Supreme Court Judgment makes clear (see p. 136/137 of LT1) that it is concerned with the scope of application of Italian copyright and procedural law, and in particular Article 156 of Law 633/41.
37. The Italian Courts have therefore simply applied Italian copyright law, with no reference to the law of foreign countries, in particular with no reference to UK law or US law. For the same reason, the Italian Courts have never even considered the question whether the plaintiffs own any foreign copyright. For example, the Italian Courts have not considered whether Warner Italy owns any UK copyright in the Italian Song. That is because, of course, they have not been concerned with any question of UK copyright at all.

## TO DECLARATION OF JOSEPH CASSIOPPI

## V. JURISDICTION OF THE COURT OF ROME IN THE CASE AT HAND

38. Warner Italy, Bergonzi and Vicino seised the Italian Courts because Prince exploited the Prince Song in Italy and therefore infringed in Italy the copyright related to the Italian Song. Italy was the location of the commission of the infringement (*forum commissi delicti*). For this reason, it was only ever legally possible for the Italian Courts to consider whether there was an infringement of Italian copyright law. They did not and do not have jurisdiction to consider questions of foreign copyright law, for the reasons explained in Section III above (in particular at paragraphs 31 and 32).
39. Indeed, the *forum commissi delicti* criterion is the only criterion that could be applied to Prince as a matter of law. That is because Italy and Rome are not the defendant's (Prince's) venue. Prince is (was) a US citizen, with no domicile in Italy (nor in Europe), and all services have been addressed in the USA (including *post mortem*). Accordingly, the Italian courts could only take jurisdiction on the basis of the *forum commissi delicti* criterion.
40. This can also be seen from the fact that, in their initial 1995 writ of summons (p. 170 of LT1), Warner Italy, Bergonzi and Vicino summoned the Italian collection society, SIAE, in its capacity as "*body competent to handling and collecting the copyright deriving from the use of the work at issue, so that the judgment will be passed against SIAE too*". Warner Italy, Bergonzi and Vicino, therefore, specifically referred to the use of the work in Italy, as SIAE is competent exclusively in that territory. Further, as I explained in the previous Section IV, the 1995 writ of summons only advanced a claim based on infringement of Italian copyright law, whose scope extends only to the territory of Italy.
41. As to the reason why Rome was territorially competent within the different Italian jurisdictions, in their initial 1995 writ of summons, Warner Italy, Bergonzi and Vicino clarified that the competence of Rome derived from Rome being the seat of the Italian copyright collecting agency, SIAE which was summoned in the proceedings only because Warner Italy wanted to immediately enforce the Judgment against it. SIAE was not a defendant to the actual claim of Warner Italy and in fact was immediately removed as a party from the proceedings after declaring that it would set aside the relevant accruals deriving from the use of the Prince Song as long as the proceedings were ongoing. SIAE was only ever a party for these limited enforcement purposes and could not have any further relevance.
42. Accordingly, Prince did not contest Italian jurisdiction, because in principle a criterion that justified seising an Italian Judge existed. However, such principle provided for specific territorial

## TO DECLARATION OF JOSEPH CASSIOPPI

boundaries as to the effect of the possible judgment. It did not give the Italian Courts general jurisdiction over Prince.

43. This was confirmed by the 2015 Supreme Court Judgment itself, which rejected a specific claim raised by Warner Italy: *“the fourth reason of the main appeal – claiming that respondents Prince and Controversy Music Inc. had accepted the Italian jurisdiction and that therefore the judgment could be effective also in all other States – is groundless because – as previously remarked – jurisdiction is the power of a judicial body to pass a judgment, which is a totally different issue from the one of the territorial boundaries of the effects of the judgment given by that judicial body”* (p. 102 (IT), p. 141 (EN) of LT1).
44. The Supreme Court therefore confirmed the existence of an Italian jurisdiction, but also acknowledged that such criterion could not allow the Judge to disregard the principle of territoriality and to rule on copyright infringement beyond the Italian territory, in a case where Rome and Italy were not the natural *forum* of Prince (who is/was a US citizen, therein domiciled and resident) and where Warner Italy never based its substantive copyright infringement claim on any law other than Italian law (as I explained in Section IV above).
45. Therefore, Warner Italy, Bergonzi and Vicino chose not to act before the court that would have been competent to take general jurisdiction over Prince (which would have been the Court of Minneapolis, where Prince resided) but took a deliberate decision to act before the Italian courts which were seised on the limited ground of the criterion of the *forum commissi delicti*.
46. The Italian Judge, therefore, having been seised according to the *forum commissi delicti* criterion (the only criterion applicable to Prince) could ascertain only the alleged copyright infringement committed in Italy, with no effect beyond that territory. The claim was brought only under Article 156 of Law 633/41 and that does not contain *“any provision on the extra-territorial enforceability of an order prohibiting reiteration of a behaviour that constitutes infringement of copyrights”* (2015 Supreme Court Judgment, p. 96 (IT), p. 137 (EN) of LT1). It follows that it was not necessary for the Italian Courts to take a position on the effectiveness of the injunction in foreign countries, since, in any case, the Italian Courts had no jurisdictional power to make a finding of infringement of foreign copyright and so no jurisdictional power to issue a cross-border injunction.
47. The fact that, when quantifying damages, Italian courts took the income generated by the Prince Song in Italy and in foreign countries into consideration is irrelevant. Article 158 of Law 633/41 provides for calculation of the damages taking into account the income generated through

## TO DECLARATION OF JOSEPH CASSIOPPI

infringement of the right (see paragraph 28.a above), while Article 1226 of the Civil Code permits equitable assessment of the damages (see paragraph 28.c above). Application of these criteria does not entail any investigation nor assessment based on the law applicable in those foreign countries. The 2012 Court of Appeal Quantification Judgment simply calculated the damages applying the criteria provided by Italian law, which provides for the disgorgement of the profits arising from the infringement without taking into consideration where the profits have arisen (p. 49 (IT), p. 65 (EN) of LT1). In other words, under Italian law **all relevant circumstances** have to be taken into consideration when assessing damages. This is confirmed by the 2015 Supreme Court Judgment, which expressly acknowledged that the approach to the quantification of the damages took into account global sales and did not depend on whether or not the Italian Song was registered abroad, nor whether or not any evidence of income was found (in this respect, I note that no accounting data from the UK has been collected and that the Italian Judge, with respect to the sales in UK and USA, liquidated the damages equitably) See p. 120/121 (IT), p. 151 (EN) of LT1. None of this means that the Italian courts considered themselves to be applying foreign copyright law.

**VI. THE INJUNCTION ISSUED BY THE ITALIAN COURTS IN THE CASE AT HAND****A. The injunction requested**

48. I wish to point out that, for the reasons I have explained, whether Warner Italy in its statement of claims asked the Italian Judge for the injunction to have effect also outside the Italian territory or not, is irrelevant. The claim was only ever based upon Italian copyright law. Furthermore, such an effect depends on what is permitted by Italian substantive and procedural law, in line with the judgments issued in Italy, which have decided the case applying Italian law alone.
49. Accordingly, and as to paragraph 11 of Mr Mondini's witness statement, I confirm that in its 1995 writ of summons Warner Italy asked the Court of Rome to issue an injunction prohibiting any further use of the Prince Song in Italy and in any other foreign country of the world. This request was repeated in all subsequent applications. However, the claimant's claim is not relevant in assessing whether or not the Italian judge is vested with the power to issue a cross-border injunction, since it does not grant the Italian Judge the power to ascertain whether a copyright infringement occurred in a different country nor to issue an injunction effective beyond the Italian territory. In fact, there was no burden on the defendant to challenge whether the Italian court should issue an injunction effective in a foreign territory, as the Italian Judge was never vested, not even in principle, with such a power. In any event, I note that Warner

## TO DECLARATION OF JOSEPH CASSIOPPI

Italy in its pleadings raised no argument at all in support of a cross-border injunction (it simply requested it but provided no justification for why it should be ordered).

**B. The injunction ordered**

50. The central finding of the Court of Appeal (the 2008 Court of Appeal Merits Judgment) can be summarised as follows:

- a. the Italian Song possessed “*though to a minimum extent*” the prerequisites of originality and novelty that Italian copyright law, as interpreted by the Supreme Court case law mentioned by the same Court of Appeal<sup>8</sup>, deems necessary for its legal protection (p. 21 (IT), p. 30 (EN) of LT1); and
- b. contrary to the conclusion reached at first instance, the report filed by the Court expert convinced the Court of Appeal that the Prince Song “*plagiarised*” the Italian Song in breach of Italian copyright law (p. 21/22 (IT), p. 30/31 (EN) of LT1). In this respect, I note that the report of the Court Expert Prof. Zaccagnini declared the songs shared both similarities and differences:
  - i) the timing and rhythm of the song are sufficiently different;
  - ii) the tone is similar, nonetheless universally common;
  - iii) some harmonic functions are different;
  - iv) the refrain of the Italian song is identical to the melody of the Prince Song; and
  - v) the other parts of the Italian song are not present in Prince's Song (however, the last three notes of the Prince Song are identical to the chorus that precedes the verse in the Italian Song; they also are in the same position and have the same metric tone).

51. Therefore, the 2008 Court of Appeal Merits Judgment was based on the Italian Judge's own interpretation of the expert report (the same report that lead the Court of first instance to reject Warner Italy's claim), such interpretation having been carried out under an exclusively Italian perspective. In the course of its judgment, notwithstanding the fact that during the Italian

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<sup>8</sup> These are Supreme Court decisions number 24594 of 23 November 2005, number 5089 of 12 March 2004, 15496 of 11 August 2004, and number 11953 of 1 December 1993. The fact that the Court of Appeal specifically mentioned this case law is a further confirmation that the assessment on the plagiarism was carried out under an exclusively Italian perspective.

proceedings Prince underlined that the Italian Song was disseminated only in Italy (as no evidence of its dissemination elsewhere has been brought by Warner Italy) and that he had no access to the Italian Song (see page 15 of Annex E, 2007 Appeal, Final pleadings filed by Prince), the Court of Appeal did not examine the question whether Prince actually had access to and actually copied the Italian song. Indeed, the only reference to this issue is in the 2008 Court of Appeal Merits Judgment, which observed that *“the plagiarised authors scanty popularity and the difficulty to trace their composition in the domestic and above all foreign markets cannot be regarded as a sign of the impossibility of plagiarism”* (p. 24 (IT), p. 32 (EN) of LT1). It shall also be considered that under Italian law, when the anteriority of the work of the claimant is undisputed (as in this case, where the Italian Song clearly pre-dated the Prince Song), the burden rests on the defendant to prove that he had no contact with the song said to have been copied and so the claimant is not required to lead evidence on the point. Therefore, once again I can confirm that the decision on plagiarism was totally based on Italian rules and principles

52. Based on that finding, and as the 2015 Supreme Court Judgment explained, *“The Court of Appeal in fact, in light of the request of the appellants to inhibit any further use of the plagiarized song “in Italy and any other country in the world”, resolved on the issue prohibiting Prince and Controversy Inc. to circulate the plagiarized song “in the State territory”.*” (p. 93(IT), p. 136 (EN) of LT1).
53. The Supreme Court correctly summarises the effect of the Court of Appeal’s conclusions in this regard. By the 2008 Court of Appeal Merits Judgment, the Court of Appeal admitted the appeal and enjoined Prince and Controversy *“to circulate the plagiarized song in the Italian State territory”* (p. 93(IT), p. 136 (EN) of LT1). By the 2012 Court of Appeal Quantification Judgment, the Court of Appeal confirmed that the previous judgment had *“admitted the request with reference to the Italian territory only”* (p. 43 (IT), p. 7(EN) of LT1). The Court of Appeal confirmed at the same time that the Court’s *“ascertainment and liquidation of damages, which are the subject-matter of the present action, are certainly also extended to the alleged prejudice derived from the commercialization of the plagiarizing work abroad”*, and further that the Italian court’s jurisdiction had never been challenged and so the Italian court had undisputed jurisdiction according to Article 4 of the 1995 law (p. 43 (IT), p. 7(EN) of LT1 ).
54. In the cassation appeal from the Court of Appeal’s conclusions on this point, the 2015 Supreme Court Judgment noted that it was not properly concerned with *“jurisdictional aspects, as the jurisdiction of the Italian Courts is not in dispute here”*; rather, it was concerned with *“the extraterritorial enforceability of a judgment of an Italian Court”* (p. 93 (IT), p. 135 (EN) of LT1).

## TO DECLARATION OF JOSEPH CASSIOPPI

In particular, it was concerned with the scope of Article 156 of Law 633/41 (under the third ground of what it called the Main Appeal, brought by Bergonzi and Vicino, and the second part of what it called the Counter-Appeal, brought by Prince and Controversy). That is, what is the extraterritorial effectiveness of a court order for an injunction prohibiting the continuation of conduct amounting to copyright infringement under Article 156 of Law 633/41, in these circumstances?

55. The position as established by the 2015 Supreme Court Judgment is that the Italian Judge has no power to issue an injunction effective in other countries, nor is it up to the Italian Judge to exclude that his/her judgment may be enforced in foreign countries. The enforceability of an Italian judgment abroad depends on possible international conventions or EU regulations applicable in such foreign countries. Thus, in summary, the 2015 Supreme Court Judgment commented:
- a. Article 156 of Law 633/41) *“does not set forth – nor could ever do [...] – any provision on the extra-territorial enforceability of an order prohibiting reiteration of a behavior that constitutes infringement of copyrights”* (p. 95 (IT), p. 136 (EN) of LT1).
  - b. The Italian judicial authority is in no position to assess the effectiveness of its judgments in a foreign legal system. Only the judicial authority of said foreign legal system bears such power. The Supreme Court thereby simply re-affirmed the undisputable principle that *“the exercise of the sovereign power of a State extends within its own boundaries. This applies to the legislative power, and to the executive and judicial power (see Cassation 5827/81)”* (p. 96 (IT), p. 137 (EN) of LT1).
  - c. The Supreme Court then merely added that *“even though the Italian courts are unable to order that a judgment of their own be enforceable outside the national territory, this does not mean that such judgment cannot be enforced in another State”* (p. 96 (IT), p. 137 (EN) of LT1).
56. The meaning of these comments in the 2015 Supreme Court Judgment is clear. In this case, the injunction issued by the Court of Appeal must be limited only to the Italian territory (owing to the fact that the Italian Courts were concerned only with infringement of Italian copyright law, which is limited in scope to the territory of Italy, and owing to the limited basis on which jurisdiction was taken). At the same time, one cannot rule out that there may be a legal hypothesis in which the injunction may also be recognised in foreign jurisdictions. Recognition in foreign jurisdictions will depend on the private international law criteria applicable in those



## TO DECLARATION OF JOSEPH CASSIOPPI

foreign countries (such law being international, EU or national, depending on the specifics of the case) and the Italian judge is in no position to rule on such criteria. Such recognition (and enforcement), however, must always be linked to an infringement of the injunction within the Italian territory. I have given one possible example at paragraph 33 above (concerning a company domiciled or with assets in England which commits acts in Italy in breach of an Italian injunction applicable only to acts in Italy).

57. I note in this regard that Mr Mondini argues at paragraphs 20-23 of his witness statement that the injunction could be recognised and enforced in the UK under EC Regulation no. 44/2001, in order to support his contention that the injunction was cross-border in scope. Mr Mondini supports his argument by quoting the following passage taken from the 2015 Supreme Court Judgment: *“the Court of Appeal, in providing that the inhibiting order is to be enforced in the Italian territory only, on one hand has correctly affirmed the principle, stated above, that a Court’s judgment is as such enforceable within the national territory of that Court, although at the same time, it has erroneously excluded implicitly that the same could be enforced in other foreign States subject to the recognition and declaration of enforceability of the same by the courts or competent authorities of such States”* (2015 Supreme Court Judgment, pp. 100-101 (IT), p. 139 (EN) of LT1).
58. Mr Mondini’s argument is ungrounded. The Supreme Court has not established an extraterritorial efficacy to the protection of copyright (as it could not do so, since, in this case, its jurisdictional powers are limited to the Italian territory and Italian copyright). The Supreme Court merely expressed a general principle of law by which the existence of international, EU or national law that may allow an injunction to be enforced in a foreign country cannot be excluded *a priori*. None of this implies that an injunction limited in territorial scope to acts committed within the territory of Italy should be given broader effect. For example, and as I have noted, breach of an injunction which applies in respect of acts within the Italian territory might require the assistance of the English courts in order to enforce against a defendant domiciled or who has assets in England. That principle, however, does not mean that the injunction is enforceable as such in respect of *acts committed* in foreign countries, nor that the injunction is enforceable without more since the approval of the foreign court is required.
59. In line with the established principles above, the 2018 Court of Appeal Referral Judgment orders the Estate of Prince Rogers Nelson to refrain from any use of the Prince Song, **without declaring the effectiveness of such injunction in foreign countries** (as had been requested by Warner Italy). The Court of Appeal acknowledged that an injunction with such a scope would not fall

within the powers (*potestas iudicandi*) of an Italian Judge (p. 158 (IT), p. 165 (EN) of LT1), as the Supreme Court correctly established in the 2015 Supreme Court Judgment (p. 96 (IT), p. 137 (EN) of LT1). The 2018 Court of Appeal Referral Judgment simply quoted the 2015 Supreme Court Judgment (pp. 157-160 (IT), pp. 164-167 (EN) of LT1). The Court of Appeal in fact stated that the Supreme Court already exhausted the argument, that is: (i) Italian Judges can issue orders effective only within the boundaries of the Italian legal system; but (ii) Italian Judges cannot exclude, in principle, that these orders become effective in foreign states, depending on the international, EU or national law applicable in such foreign states.

60. Accordingly, the entire Italian proceedings, in their various instances (first instance, appeal, Supreme Court, referral proceedings), have been conducted on the basis of Italian substantive and procedural law only. More specifically, the Italian Courts have always examined, assessed and ruled the issue of the alleged copyright infringement under Italian copyright law and in relation to the Italian legal system only. Indeed, they were required to do so, because of the limited basis on which the Italian Courts took jurisdiction. The Italian Supreme Court did not therefore purport to pronounce on the infringement of any other national copyright law, nor to confirm the grant of any cross-border injunction in respect of infringement of any foreign copyright law.
61. In addition to the foregoing, it should be noted that in the case at hand the injunction issued by the Court is not even assisted by a penalty (the so-called *astreinte*), as would be in principle possible under Article 156 of Law 633/41 and Article 614 *bis* of the Italian Civil Procedure Code (i.e. the Judge has not established “*a sum due for any ascertained infringement of the injunction or delay in its execution*”). Consequently, the injunction issued by the Court is not suited for coercive enforcement, since the Italian judge has not issued that kind of order.

**C. The pending appeal**

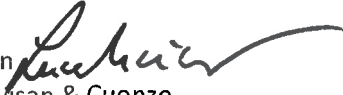
62. As I have noted at paragraph 15 above, the seventh ground of appeal against the 2018 Court of Appeal Referral Judgment asks for the territorial scope of the injunction to be clarified so that it can be put beyond any doubt. In particular, paragraph 87 of the appeal refers to the principle of territoriality of copyright, which limits the scope of the injunction to the territory of Italy since only Italian copyright law was applied in this case, and paragraph 88 of the appeal points out that no cross-border injunction could in principle have been ordered because jurisdiction was taken on the *forum commissi delicti* criterion: see p. 232 (IT), p. 272 (EN) of LT1. The resolution

## TO DECLARATION OF JOSEPH CASSIOPPI

of this appeal may be expected in not less than two years' time. I exhibit the screenshot from the Electronic Supreme Court Docket at pp. 278-286 of LT1.

**Statement of Truth**

I believe the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Full name: Luca Trevisan   
Position held: Partner, Trevisan & Cuonzo  
Dated: 28 August 2020

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**EXHIBIT B  
TO DECLARATION OF JOSEPH CASSIOPPI**S M TREGEAR  
SECOND WITNESS STATEMENT  
FILED ON BEHALF OF THE CLAIMANTS  
SMT2  
28 AUGUST 2020IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

CLAIM NUMBER: QB – 2020 – 001827

B E T W E E N:

- (1) COMERICA BANK AND TRUST, N.A.  
(as personal representative of the Estate of Prince Rogers Nelson)
- (2) NPG MUSIC PUBLISHING LLC
- (3) NPG RECORDS INC.
- (4) UNIVERSAL MUSIC CORP.
- (5) SONGS OF UNIVERSAL, INC.
- (6) UNIVERSAL MUSIC PUBLISHING INTERNATIONAL LIMITED
- (7) UNIVERSAL MUSIC PUBLISHING LIMITED
- (8) SONY MUSIC ENTERTAINMENT

Claimants

- and -

WARNER CHAPPELL MUSIC ITALIANA S.R.L.

Defendant


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**SECOND WITNESS STATEMENT OF STEVEN MARK TREGEAR**


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I, Steven Mark Tregear, of Yalding House, 152-156 Great Portland Street, London W1W 5QA, solicitor, will say as follows:-

1. This is my second witness statement in this Part 8 Claim, further to my first witness statement dated 27 May 2020. I refer also to a separate witness statement given by me, also dated 27 May 2020, in the related Part 74 appeal proceedings.
2. I continue to use the abbreviations in my first witness statement in this witness statement.
3. I have had the opportunity of reading the witness statements of Matthew John Blower and Giorgio Mondini dated 3 July 2020 filed on behalf of the Defendant. Italian lawyers for the Prince Estate are responding to the evidence given by Mr Mondini and I have seen and read the witness statement of Luca Trevisan dated 28 August 2020 in that regard.
4. In this statement I respond only to the points Mr Blower has made that do not repeat the Italian position as it has been told to him by Mr Mondini (since Mr Trevisan is addressing those matters on behalf of the Prince Estate). I do not therefore comment on paragraphs 6 - 22 of Mr Blower's evidence as these paragraphs simply record the progress of the Italian litigation and set out his understanding of what has happened in those proceedings, broadly based upon what he has been told by Mr Mondini.

**EXHIBIT B**  
**TO DECLARATION OF JOSEPH CASSIOPPI**Registration of the Italian Judgments in England and Wales

5. Paragraphs 23 – 26 and 38 - 41 of Mr Blower's statement simply record how the Defendant came to obtain the Cook Order and the fact, not disputed, that the Prince Estate's protective application to appeal the Cook Order is out of time.
6. As to the timing of the application for leave to appeal (not strictly relevant to the Part 8 claim), Mr Blower says that no "*satisfactory explanation to excuse the lateness*" has been given. That is incorrect and first I refer to paragraph 10(b) of my first witness statement in the CPR Part 74 appeal proceedings, which explains that the initial understanding of the Prince Estate was that the Cook Order only concerned the money obligation arising from the Italian Judgments and not the injunction. (Indeed, that remains its understanding.) By a letter dated 17 March 2020 (page 144 of "SMT1"), the Defendant confirmed, in response to the Prince Estate's request for clarification, that its view was that the Cook Order concerned not only the money obligation, but also the global injunction allegedly granted pursuant to the Italian Judgments. The Part 74 appeal was brought just over two months following receipt of that letter, on 27 May 2020.
7. Paragraph 10(g) of my first witness statement in the CPR Part 74 appeal proceedings further notes that that appeal and this Part 8 claim were brought in the circumstances of the constraints on normal working life and the transition into lockdown with which this firm, Trevisan and Cuonzo (the Prince Estate's Italian lawyers) and Counsel had to contend between March and May 2020. However, in light of Mr Blower's comment, I can elaborate on the difficulties we faced (in addition to the obvious ones) in taking instructions from each of the Claimants.
  - 8.1. In addition to the Prince Estate (the First Claimant) there are seven other claimant parties. Two of those are in effect controlled by the Prince Estate (the Second and Third Claimants) but the Fourth to Eighth Claimants are individual entities within either Universal or Sony, the internationally known entertainment companies.
  - 8.2. The Fourth, Fifth and Eighth Claimants are based in America; the Fourth and Fifth Claimants being US companies, the Eighth Claimant a New York law partnership. Once it became clear that the Fourth, Fifth and Eighth Claimants were important parties to these proceedings, my firm first had to make contact with the relevant personnel at those entities (which in practice we did through their UK sister companies), explain what the intended action was about and the reason for the proposed Claimants becoming involved and to then obtain their consent to be added as parties. This was not a straightforward matter (especially in lockdown).
  - 8.3. In addition, although part of the same process, the in house lawyer for the Sixth and Seventh Claimants in this country also had to be informed what this dispute is about, chain of title documentation had to be provided to my firm, it had to be analysed and the Sixth and Seventh Claimants then had to consent to being involved.
  - 8.4. Whilst it is only the First Claimant that is directly involved in the CPR Part 74 appeal, as the Court will appreciate and as the Defendant has agreed, procedurally the two cases are running in tandem which also needed to be explained to the Fourth to Eight Claimants.

**EXHIBIT B  
TO DECLARATION OF JOSEPH CASSIOPPI**

- 8.5. These Part 8 proceedings then needed to be prepared and approved so that they were ready for service at the same time as the Part 74 appeal.

Enforcement of the Italian Judgments

9. In paragraphs 27 to 37 of Mr Blower's statement, he addresses the steps taken by his client to date to enforce the Italian Judgments A-D (as he describes them; Judgment A being the 2008 first instance judgment, Judgment B being the 2012 judgment of the Court of Appeal, Judgment C being the 2015 judgment of the Court of Cassation/Supreme Court, and Judgment D being the 2018 judgment of the Court of Appeal which gave effect to Judgment C). In the present context, I need only deal with the injunction and the alleged breach thereof.
10. First at paragraph 31 of his witness statement Mr Blower states that he *"is not aware of the Estate having disputed the scope of the injunction in any other jurisdiction outside of Italy"*. However, I have been informed by Ms Friedemann, an American lawyer for the Prince Estate, and believe, that in relation to the different legal actions the Defendant has commenced in different jurisdictions against the Prince Estate, the position is as follows (copies or translated copies of the different orders to which I refer are at pages 2 to 55 of "SMT2"):-
- 10.1. In Germany, an application was made to the Regional Court of Berlin which resulted in a *"Court certificate of enforceability"* and accompanying *"Ruling"*. Neither of those documents mentions any injunction at all. Both are instead focussed entirely – like the Cook Order – upon the money judgment. The certificate specifies that *"The obligation to be enforced is as follows: The respondents were ordered to pay the claimant €949,719.60 (as first instalment of the sum adjudged in the amount of €956,608) plus interest ..."*. The Ruling appears to have dismissed the application in all respects other than the monetary element specified therein. There was no reference to the injunction.
- 10.2. In Holland the focus has been on the same 2012 Court of Appeal Italian judgment and again there was no reference to the injunction.
- 10.3. In France there have been three court orders. First an order registering Judgment A as described by Mr Blower. That order summarised the Italian proceedings and noted the Italian only scope of the judgment. The second French order registers Judgment B and there is no mention of the Italian injunction in it. The final French order registers Judgment C as defined by Mr Blower. The summary then filed (page 38 of "SMT2") is not entirely clear but I do not see any reference to the 2015 Italian Supreme Court decision and the Italian injunction is neither set out nor explained.
- 10.4. In Australia there is a court order relating to Judgments A-D as Mr Blower describes them. I can trace no reference in the order to the Italian injunction – as with the Cook Order, the focus was on the debt due to the Defendant.
- 10.5. In 2019 in Ontario, Canada, the Defendant took legal action but I am informed by the First Claimant's Canadian lawyer, Andrea McEwan, that no substantive steps have been taken in those proceedings.

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11. These proceedings are therefore, as I understand it, the first in which the Defendant's lawyers have suggested that the injunction granted in the Italian proceedings encompasses not just Italy but also every jurisdiction worldwide (or at least every jurisdiction which has a body of copyright law). They are therefore the first in which the Prince Estate has been required to deal with any such contention.
  
12. Next it is unclear to me whether Mr Blower is seeking to insinuate that the Prince Estate or indeed any of the other Claimants has continued to exploit the Prince Song outside Italy. However, and for the avoidance of doubt and as I confirmed at paragraph 28(a) of my first witness statement, there has been no exploitation of the Prince Song by any of the Claimants since at least December 2017. None of the matters mentioned by Mr Blower cast any doubt on this. To the contrary, the Prince Estate and the Claimants have been respectful of the arguable scope of the Italian injunction irrespective of its dubious worldwide enforceability. This is so despite the Prince Estate's position that the Italian Judgments are not on their face effective to prohibit exploitation outside Italy (or at very best their effect is unclear pending the forthcoming appeal), and to the extent that they do, are unenforceable. In particular:
  - 12.1. When the Prince Estate negotiated with the Eighth Claimant prior to June 2018 to permit the Eighth Claimant to exploit certain master recordings of Prince's performances, it declared to the Eighth Claimant the existence of the Italian legal proceedings. As a result I am informed by Michael Smith, director of Legal and Business affairs at Sony Music Entertainment UK Limited, that the Eighth Claimant and those deriving rights from it have not sought to exploit the recording of the Prince Song since the Eighth Claimant acquired the right to do so. That was obviously a prudent declaration by the Prince Estate but also reflected the position in which it found itself having regard to the claimed scope of the Italian injunction.
  - 12.2. Jason Boyarski, an American lawyer at the firm of Boyarski Fritz LLP who represented the Prince Estate during negotiations with the Fourth and Fifth Claimants in 2016 tells me, and I believe, that the position in relation to the Italian injunction was explained to the Fourth and Fifth Claimants.
  - 12.3. The same is true, I am informed by Mr Boyarski, in respect of a separate agreement entered into by the Prince Estate in relation to performance income generated by the Prince catalogue of songs which agreement was concluded in December 2016.
  - 12.4. Further, I am informed by Mr Boyarski and believe that when Prince died in April 2016 a Special Administrator was appointed by the US court to handle the Prince Estate's affairs. Mr Boyarski believes that the Administrator notified various third parties of the position in relation to the Italian litigation and the Prince Song.
  - 12.5. However, I believe some performance and broadcast income in relation to the Prince Song has been collected on behalf of both Prince and the Prince Estate. First Mr Boyarski believes that in some instances where blanket performance or broadcast

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TO DECLARATION OF JOSEPH CASSIOPPI**

licences have historically been in place with third parties very small sums were generated by the Prince Song. However it was neither possible nor practical to close down each and every licence of that nature only in relation to the Prince Song.

- 12.6. Separately the Performing Right Society (“PRS”) based in England grants licences in relation to the public performance of musical and literary copyrights. It also collects income generated by such public performances as well as from broadcast income generated by the exploitation of those musical and literary copyrights registered with it. I am informed by Karen Fishman, senior corporate counsel at PRS, that as at 23 July 2020 PRS was only holding twenty-eight pence in respect of the Prince Song.

The arguments made under the Part 8 Claim

13. The Prince Estate’s position is that the Italian Judgments only deal (and only purport to deal) with a breach of Italian copyright law. There has never been any trial in Italy, or indeed elsewhere, of the dispute under UK copyright law. The injunction handed down by the Italian Court only applies in respect of exploitation of the Prince Song within the territory of Italy, pursuant to the territoriality principle which is central to copyright law. As Mr Trevisan explains, that is the effect of the Italian Judgments, properly construed, as a matter of Italian law. In any event, to the extent that the Italian Judgments are intended to have such extraterritorial effect, they are unenforceable outside Italy or should not be recognised for the various reasons relied upon by the Prince Estate.
14. At best, it must follow from the difference between the parties’ lawyers in this regard that it is unclear whether the Italian Supreme Court intended the injunction to apply in respect of exploitation of the Prince Song in other countries (including the UK).
15. These are matters which the Prince Estate will address primarily by way of submission (and Mr Blower notes at paragraph 41 that they are principally matters of law and argument). Nonetheless, I make the following comments on points made at paragraphs 38 - 55 of Mr Blower’s statement.
16. First, at paragraph 43 of his statement, Mr Blower alleges that *“there can be no doubt that the Italian courts were concerned with worldwide copyright in the Italian Judgments”*. He repeats this suggestion at paragraph 54 of his statement. Mr Trevisan deals with this in his witness statement but I specifically note:–
- 16.1. Mr Blower does not dispute the overarching principle that copyright is territorial. That means, in practice, that if one party wants to prove that his/her/its copyright has been infringed by another then it must prove in accordance with the law of the country where infringement is said to have occurred.
- 16.2. There is no evidence I have seen that the Italian court, in over twenty-five years of this litigation and despite multiple applications and hearings, has ever been addressed on the copyright laws of, for example, the United States of America or the United Kingdom. Indeed Mr Trevisan informs me and I believe that the Italian courts have



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always examined, assessed and ruled the issue of the alleged copyright infringement in accordance with Italian copyright law. That means that the Italian courts have never addressed certain important issues which it would have been necessary to address as a matter of, for example, US or UK copyright law.

- 16.3. I am informed by Mr Trevisan (see paragraph 51 of his statement) that under Italian law when the anteriority of the work of the claimant is undisputed (as is the case with “Takin’ Me To Paradise”), it is up to the defendant to prove that he had no contact with the song said to have been copied. As I understand it from Mr Trevisan, the only time the Italian courts touched upon this was in 2008 when the Court of Appeal observed *“the plagiarised authors scanty popularity and the difficulty to trace their composition in the domestic and above all foreign markets cannot be regarded as a sign of the impossibility of plagiarism”*. Thus, the only question considered by the Italian courts has been whether plagiarism was impossible. There is no obligation on the claimant to prove that the defendant had contact with or access to the work being copied.
- 16.4. However, and by way of contrast and example, Ms Friedemann tells me that under US federal law there are two essential elements to a US copyright infringement claim: ownership of a valid copyright and then copying/unlawful appropriation of the original elements of the copyrighted work. Copying may be proved by direct evidence of copying (which is not present in this case) or through indirect or circumstantial evidence. Proof of copying through indirect evidence requires a showing that the alleged infringer had access to the copyrighted work and that the accused work is substantially similar to the copyrighted work. A copyright owner may prove access to the copyrighted work by demonstrating either widespread dissemination of the work or a chain of events that caused the defendant to have access to the work. When a copyright owner seeks to prove copying through indirect evidence the similarity between the copyrighted work and the accused work must give rise to an inference of copying, such that the accused work would not have arisen if it had been independently made. The accused infringer may rebut an accusation of copying by showing that the accused work was created independently, without reference to the copyrighted work.
- 16.5. Ms Friedemann further informs me that an injunction is not automatically granted to a successful plaintiff under US copyright law. To obtain an injunction, the plaintiff must show that it will suffer irreparable harm absent an injunction and that legal remedies such as money damages are inadequate to compensate for the injury. The court may also consider the balance of hardships between the parties and whether the public interest is served by issuing an injunction.
- 16.6. As such, matters essential to considering whether the alleged plagiarism would be actionable under US federal copyright law have never been argued in front of the Italian court.

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- 16.7. Similarly, under English copyright law, absent direct evidence of copying, I believe the usual way to establish copyright infringement is to show the similarity or similarities between the two works and to then demonstrate the possibility the defendant had access to and familiarity with the claimant's work. Once an opportunity to copy can be shown the burden shifts to the defendant to explain away any similarity. However, as noted at paragraph 16.3 above, the process was not, according to Mr Trevisan, followed through in the Italian litigation.
- 16.8 Accordingly, if as Mr Blower says, the Italian court was concerned with worldwide copyright infringement, it does not appear to have applied any territory by territory analysis based on applicable local law.
17. Second, and in response to paragraphs 50 – 52 of Mr Blower's statement (injunction and public policy), I note as follows:–
- 17.1. Mr Blower suggests, at paragraph 51, that a submission to the effect that recognition of a foreign judgment would be manifestly contrary to public policy is an "*argument against the recognition of (the injunction) under Article 34(1) of the Judgments Regulation*" which is not available in the context of the Part 8 claim (as opposed to the appeal). However, this misunderstands the case being advanced by the Prince Estate.
- 17.2. As a matter of construction, court orders should be interpreted so that their effect is lawful and in line with fundamental human rights. Accordingly, the Cook Order should not be given an interpretation which is (manifestly) contrary to public policy (to the extent that such a construction is unavoidable, the Prince Estate of course seeks to appeal against it).
- 17.3. What the Defendant seeks to do on its reading of the Cook Order is to prevent each of the Claimants from enjoying and enforcing their national copyright without there having been any trial let alone a fair trial applying applicable copyright laws. That cannot be correct and is contrary to public policy in my submission.
- 17.4. Mr Blower's point seems to be a suggestion that the Prince Estate has, in effect, had its opportunity if it wanted to raise national copyright issues in the Italian litigation, but did not take that opportunity. However, as Mr Trevisan explains, the entire Italian proceedings were conducted on the basis of Italian substantive and procedural law only (the central allegation being a breach of Article 156 of the Italian Copyright Law no. 633/1941 as I understand it). The onus was not, Mr Trevisan tells me and I believe, on Prince and the Prince Estate to raise international copyright issues before the Italian court, because the Italian court was only applying Italian copyright law. The Italian court could not issue an injunction preventing exploitation of the Prince Song in a foreign territory; as a matter of principle it is simply not seised with that power. Accordingly foreign law issues were not relevant regardless of the scope of the injunction the Italian songwriters contended for.

**EXHIBIT B  
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- 17.5. It is for this reason that the only proper reading of the Italian Judgments is that they are concerned only with an infringement of Italian copyright law. If and to the extent that the effect of the Italian Judgments goes further than this (as the Defendant contends, contrary to the position of the Prince Estate), then this is contrary to public policy and the fundamental (and Article 6 ECHR) right to a fair trial.
18. Mr Blower says (paragraph 52.4 of his statement) that certain of the Claimants (the Fourth and Fifth Claimants) had direct knowledge of the proceedings in Italy such that they can have "*no cause for complaint*" about what is now happening. However, those parties only acquired rights which stem from the agreement dated 27 October 2016 exhibited at "SMT1" and referred to in paragraph 10 of my first witness statement. As I explain above, they acquired those rights with knowledge of the extant Italian proceedings but at that point, the Italian courts had handed down Judgments A-C as Mr Blower describes them. Judgment D (which is still the subject of an appeal) related to territorial enforcement. However, it is simply unreasonable and impractical to assert that efforts should have been made by either the Fourth or Fifth Claimant to engage themselves in protracted and convoluted Italian litigation which had by 2016 determined the substantive question of whether the Prince Song plagiarised "Takin' Me To Paradise". Those Claimants were reasonably entitled to assume that the Italian courts would not purport to make an exorbitant injunction, and that, if they did, the English courts would decline to enforce it as a matter of public policy.
19. Finally I also note that Mr Blower says nothing about either the Sixth, Seventh or Eighth Claimants having lost their opportunity to present their arguments to the Italian court: plainly they had no such opportunity. Those Claimants have been and are being prejudiced by the approach the Defendant is taking in this matter.

**Statement of Truth**

I believe the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

**Full name:** Steven Mark Tregear

**Signed:** 

**Position or office held:** Partner

**Dated:** 28 August 2020

**EXHIBIT C**  
**TO DECLARATION OF JOSEPH CASSIOPPI**

**From:** [Bruce, Andrea](#)  
**To:** [Larry Mestel](#); [Ramon Villa](#); [Timothy Murphy](#); [Charles Spicer, Jr. \(charles.spicerjr@gmail.com\)](#); [jupsn.llc@gmail.com](#); [Justice James Gilbert](#); [Norrine Nelson \(norrine92841@gmail.com\)](#); [Omarr Baker \(obaker@prnfamily.com\)](#); [President Nelson](#); [Tyka Nelson](#); [Virginia Baker](#)  
**Cc:** [Aycock, Angela \(Contingent Worker\)](#)  
**Subject:** Update- Bergonzi Litigation  
**Date:** Friday, January 29, 2021 2:28:15 PM  
**Attachments:** [image001.png](#)

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**[EXTERNAL E-MAIL]**

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Dear Heirs, Primary Wave, and Mr. Murphy:

As you know, one of the remaining outstanding litigation items is the Bergonzi matter. As we have discussed on various occasions, this case involves a judgment in Italy obtained against Prince during his lifetime, and this judgment must be satisfied before the Estate can close—the monetary judgment is final and cannot be appealed. We are continuing to negotiate with Warner Chappell regarding three items: (1) the portion of revenues the Estate earned on the song from the time the judgment was entered (2012) to present that will be paid to Warner; (2) how future revenue earned on the song will be split; and (3) Warner's demand for payment of its legal fees seeking to enforce the judgment.

To remove the monetary judgment as an impediment to wrapping-up the Estate, and to avoid additional interest and to reduce attorneys' fees, we believe at this time it is best to pay the monetary judgment. As such, we intend to pay, by month end February, the judgment in the amount we have computed as owing-- €614,309.92 plus interest from February 1, 2021 through the date of payment. The €614,309.92 figure is based on the total judgment amount, offset by royalty amounts previously collected by the judgment holder, plus interest from the date of judgment through January 31, 2021.

Warner Chappell has not affirmatively responded to us that that they are in agreement with this figure. If Warner Chappell decides they disagree, they may continue to file actions seeking to collect funds held by third parties. We would contest any such activity based on the position that the judgment has been paid in full, and we believe the Estate has the stronger position.

The alternative course of action is to do nothing, and in that case Warner Chappell would continue to bring third party collection actions until the judgment is paid. The Estate is responsible to bear Warner Chappell's attorney's fees in those proceedings.

Benefits of paying the judgment now include: (1) it avoids further attorneys' fees incurred by Warner Chappell in bringing additional third party collection actions; (2) once the judgment has been paid, if Warner Chappell brings another enforcement action and loses then Warner Chappell has to pay the attorney's fees the Estate incurred; and (3) the interest being accrued

**EXHIBIT C**  
**TO DECLARATION OF JOSEPH CASSIOPPI**

on the judgment will stop accruing.

Because of the benefits described above, we intend, by month end February, to pay the judgment amount we have computed as owing, and we will take the position going forward that the judgment has been paid in full.

If you have any questions or concerns about this course of action, please let us know by February 12<sup>th</sup>, 2021.

Thank you,

**Andrea Bruce, CFP®** | Vice President, Manager- Trust Unique Assets | Comerica Trust  
**Comerica Bank / Comerica Bank & Trust, N.A.** | MC 2393 | 3551 Hamlin Rd | Auburn Hills, MI  
48326  
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**EXHIBIT D**  
**TO DECLARATION OF JOSEPH CASSIOPPI**

**From:** [Bruce, Andrea](#)  
**To:** [Larry Mestel](#); [Ramon Villa](#); [Charles Spicer, Jr. \(charles.spicerjr@gmail.com\)](#); [jupsn.llc@gmail.com](#); [Justice James Gilbert](#); [Norrine Nelson \(norrine92841@gmail.com\)](#); [Omarr Baker \(obaker@prnfamily.com\)](#); [President Nelson](#); [Tyka Nelson](#); [Virginia Baker](#)  
**Cc:** [Aycock, Angela \(Contingent Worker\)](#)  
**Subject:** Important Communication- Settlement of Bergonzi Litigation  
**Date:** Monday, March 22, 2021 10:31:06 AM  
**Attachments:** [image001.png](#)  
[Memorandum of Understanding - 220321 \(v4\).doc](#)

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**[EXTERNAL E-MAIL]**

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Dear Heirs and Primary Wave,

At last week's heirs meeting, Comerica provided an update that we were close to reaching settlement terms for the Bergonzi litigation. Today, I am pleased to notify you that we have reached agreement on terms to resolve this litigation. A Memorandum of Understanding outlining the settlement terms is attached to this email.

Comerica intends to submit this proposed settlement to the court first thing Wednesday morning. We would like to submit it with a statement that we have shared it with the heirs and Primary Wave, and that no parties have objected. As such, please review this email and the attached Memorandum of Understanding. If you have an objection to this settlement, please let me know no later than end of day tomorrow, March 23, 2021. Thank you.

Regards,

**Andrea Bruce, CFP®** | Vice President, Manager- Trust Unique Assets | Comerica Trust  
**Comerica Bank / Comerica Bank & Trust, N.A.** | MC 2393 | 3551 Hamlin Rd | Auburn Hills, MI 48326  
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**EXHIBIT E**

**TO**

**DECLARATION OF JOSEPH J. CASSIOPPI**

**(FILED ENTIRELY UNDER SEAL)**