

In the name of the King

# judgment

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## AMSTERDAM DISTRICT COURT

Private Law Division, Preliminary Relief Judge in Civil Proceedings

case number / cause-list number: C/13/685451 / KG ZA 20-527 MvW / JD

### Judgment in preliminary relief proceedings of 10 September 2020

in the matter of

1. the private limited company  
**LEFT LANE B.V.**,  
having its registered office in Amsterdam,  
2. **DENNIS PRINCEWELL STEHR**,  
residing in Amsterdam,  
plaintiffs in the summons of 10 July 2020,  
counsel M. Steenhuis of 's-Hertogenbosch,

versus

the private limited company  
**SONY MUSIC ENTERTAINMENT NETHERLANDS B.V.**,  
having its registered office in Hilversum,  
defendant,  
counsel Th. J. Bousie of Amsterdam.

The plaintiffs will hereinafter collectively be referred to as Left Lane et al., and the defendant will be referred to as Sony Music NL. In the documents Sony Music NL is also referred to as SME. The plaintiffs will individually be referred to as Left Lane B.V. and Stehr.

#### 1. The proceedings

Left Lane et al. provided further explanation of the summons at the oral session of 13 August 2020. Sony Music NL presented a defence and explained the statement of defence it had submitted. Both parties submitted exhibits into the proceedings and set out their positions on the basis of written notes of their oral arguments. After further debate, judgment was passed today.

The following persons were present at the oral session:

on the part of Left Lane et al.:

- Stehr with counsellor Steenhuis;
- P. Keulen, financial consultant of Left Lane B.V.;
- S. de Groot, employee of Left Lane B.V.;

on the part of Sony Music NL:

- counsellor Bousie;
- A.S. van Everdingen, a colleague from Bousie's office;
- A. de Maegd, Director of Legal and Business Affairs at Sony Music NL;
- E. Leenstra, Legal & Business Affairs manager at Sony Music NL;
- E. Groeneveld, Supervisor Royalties & Neighbouring rights at Sony Music NL;

## 2. The facts

2.1. Stehr is a musician, his stage name is Mr. Probz. His breakthrough came in 2013 with the single *Waves*. He ran a sole trader business under the name Left Lane Recordings. In July 2014 he founded the private limited company Left Lane B.V. This company is an audio recordings producer and Stehr's own record label. Left Lane B.V.'s activities include publishing new releases of Mr. Probz, and other artists.

2.2. Sony Music NL is part of the Sony Corporate NetWork, a world-wide recording company.

2.3. The German electro-producer Robin Schulz remixed the *Waves* track. Left Lane Recordings and Schultz made a contract on 12 October 2013 on the basis of which Left Lane B.V. later became a phonogram producer of that '*Waves remix*'.

2.4. On 1 November 2013 Left Lane Recordings and Sony Music NL entered into an exclusive licence agreement for *Waves*, as well as for the *Waves remix* (hereinafter: the Waves Agreement). That agreement sets out, inter alia, the following.

<p><i>Royalty for sales by SME or SME affiliate or exclusive sub-licensors in the entire Territory (Singles, Albums, Video's)</i></p>	<p><b><u>Base Royalty:</u></b></p> <p><u>Benelux</u></p> <ul style="list-style-type: none"> <li>- Digital sales: <b>50%</b> (downloading/streaming/mobile/singles/bundles)</li> <li>- Physical sales: <b>20%</b></li> <li>- SME Compilations: <b>25% physical &amp; 50% digital (pro rata)</b></li> </ul> <p><u>USA/Canada:</u></p> <ul style="list-style-type: none"> <li>- Digital sales: <b>50%</b> (downloading/streaming/mobile/singles/bundles)</li> <li>- Physical sales: <b>20%</b></li> </ul> <p><u>Rest Of World</u></p> <ul style="list-style-type: none"> <li>- Digital sales: <b>20%</b> (downloading/streaming/mobile/singles/bundles)</li> <li>- Physical sales: <b>20%</b></li> </ul> <p>(...)</p> <p><i>Digital: net income received at source in every territory by SME or its local affiliate or exclusive sub-licensees from digital retailers/distributors/licensees/and any other applicable 3<sup>rd</sup> party</i></p> <p>(...)</p>
<p>(...)</p>	<p>(...)</p>

<p><i>Collective Neighboring rights for production companies collected by SME or SME affiliates or exclusive sub-licensees</i></p> <p><i>Public Performance/Broadcasting</i></p>	<p><i>From the date of signature, <b>60/40 split in the advantage of Licensor</b> of producer/record company share of neighbouring rights income payable at source <b>in the Netherlands</b>, and <b>55/45 split in the advantage of Licensor in every other country of the Territory</b>, as of the date of this Agreement (performer share to be collected separately by performer).</i></p> <p><i>In the Netherlands, each party will collect its share directly with Sena.</i></p> <p><i>In all other territories, SME collects 100% with the relevant collecting societies and accounts the 50% Licensor share in the royalty statements.</i></p> <p><i>(...)</i></p>
<p><i>Royalty Statements</i></p>	<p><i>Sent to Licensor each half year within 90 days from June 30 and December 31.</i></p> <p><i>Payment within 30 days after invoice date.</i></p> <p><i>Returns reservation (to be held on physical sales only: maximum 25% - each reserve to be liquidated not later than the period following the period it was established.</i></p> <p><i>Licensor has the right to audit SME's books and records maximum once every year in SME's offices in the Netherlands and SME will pay for the costs of the audit only if an error of 10% or greater is discovered. All statements rendered by SME shall be binding unless specific written objection is made to SME within two (2) years from the date the statements are actually rendered.</i></p>
<p><i>(...)</i></p>	<p><i>(...)</i></p>
<p><i>Termination</i></p>	<p><i>Neither party shall be entitled to terminate this agreement, recover damages or seek any other remedy by reason of any breach by the other party of its material obligations hereunder, unless the other party has failed to remedy such breach (if capable of remedy) within thirty (30) days following receipt of notice thereof.</i></p>

2.5. Around the beginning of 2014 Sony Music NL released the *Waves remix*. The *Waves remix* was a number 1 hit in European countries and also reached a number 1 position in the Billboard Hot Dance/Electronic Songs hit list in the United States.

2.6. On 13 May 2014 Sony Music NL, Left Lane Recordings and the American subsidiary of Sony, Ultra Records, signed an addendum to the Waves Agreement (hereinafter: the Ultra Agreement). The Ultra Agreement sets out, inter alia, the following.

*“Reference is hereby made to the license agreement between Left Lane Recordings (“Licensor” or “you”) and Sony Music Entertainment Netherlands BV (“SME”) dated November 1, 2013 (“the Sony License Agreement”) regarding the assignment by Licensor to SME of the exploitation rights in and to the master recordings (...) including the Robin Schultz remix (...) embodying the musical composition entitled “Waves” (the “Single”) as performed by the recording artist known as “Mr. Probz” (“Artist”).*

*(...)*

The Agreement is hereby amended as follows:

1. The Parties hereby acknowledge that pursuant to the Sony License Agreement, Ultra Recordings, LLC ("Ultra" or "us") is SME's local affiliate for the territory of the United States and Canada, including all territories and possessions thereof (the "Ultra Territory"), and thus has the same rights in and to the Masters for the Ultra Territory as SME does for the remainder of the world. (...)

(...)

3. Notwithstanding the provisions of the Sony License Agreement, but solely regarding our exploitation of all remixes (including the Robin Schulz Remix) of the Single (i.e. all versions other than the original version of the Single) (the "Remixes") in the Ultra Territory, and solely on a prospective basis i.e. after the date of the full execution of this Amendment, we hereby agree to amend the base royalty rate for digital sales provided for in the Sony License Agreement as follows: (i) with respect to digital net sales by us of any record solely embodying Remix(es) through normal retail channels in the Ultra Territory, the "digital sales" base royalty rate for the United States and Canada solely with respect to such records shall be equal to twenty-five percent (25%); (ii) in the event that digital net sales by us of any record solely embodying Remix(es) through normal retail channel sales in the United States and Canada exceeds one million (1,000,000) units (as measured by Soundscan), the "digital sales" base royalty rate for the United States and Canada solely with respect to such record shall be increased, on a prospective basis, from twenty-five percent (25%) to twenty-seven and one-half percent (27.5%); and (iii) in the event that digital net sales by us of any record solely embodying Remix(es) through normal retail channel sales in the United States and Canada exceeds two million (2,000,000) units (as measured by Soundscan), the "digital sales" base royalty rate for the United States and Canada solely with respect to such record shall be further increased, on a prospective basis, from twenty-seven and one-half percent (27.5%) to thirty percent (30%); in each case calculated as provided for in the Sony License Agreement."

2.7. On 27 August 2014 Left Lane Recordings and Sony Music NL entered into an exclusive license agreement for an album yet to be released (hereinafter: the Album Agreement). That album was not made.

2.8. By e-mail of 1 March 2018 to Sony Music NL, M. Baudo, then manager of Stehr, reported a number of alleged breaches on the part of Sony Music NL, including failure to apply the royalty increases in the Ultra Agreement (the 'sliding scales') in respect of *Waves*, the lack of all sales of the second half of 2015 and the first half 2017 and the lack of reporting of all neighbouring rights. In that e-mail Baudo requested, inter alia, a correction on the statements relating to the 'sliding scale' and a soft audit from Sony Music NL to see to what extent all income had been received from abroad.

2.9. On 14 June 2018 the parties entered into a termination agreement, whereby the parties agreed, inter alia, to the termination of the agreed "Contract Term" of the Album Agreement.

2.10. In October 2019 there was an audit of the books at Sony Music NL, with regard to the statements furnished by Sony Music NL in the period January 2016 through June 2019, executed by the accountants firm Grant Thornton. The first findings thereof are included in a report, which sets out, inter alia, the following.

*"Limitation of scope: Sony was unable to provide information relating to their international divisions at the time of the review although they were able to provide information held in Netherlands. Ultra Records did not provide access to the audit.*

(...)

*2. During the review, we were unable to verify revenue and deductions reported by Sony relating to their affiliate Ultra Records LLC (Ultra). Sony explained that the review should be addressed to Ultra directly while Ultra explained that the review should take place via Sony. We were therefore unable to establish whether revenue and deductions relating to Ultra are complete or valid. ”*

2.11. By letter of 19 December 2019 Left Lane et al. (in short) demanded that Sony Music NL and Ultra Records furnish it with information relating to (source data of) sales of the recordings and relating to collected neighbouring rights, to pay unpaid royalties and collected neighbouring rights, and to cease and desist the use of samples of the song *Waves*. By letter of 9 January 2020 Ultra Records, and by letter of 22 January 2020 Sony Music NL, rejected this demand.

2.12. By letter of 4 February 2020 Left Lane B. V. wrote to Ultra Records and to Sony Music NL, inter alia, that it was cancelling the *Waves* Agreement, the *Ultra* Agreement and clauses 4, 5 and 11 of the termination agreement with immediate effect.

### **3. The dispute**

3.1. Left Lane et al. is claiming – in short –

- I that Sony Music NL be ordered to cease and desist every infringement of the neighbouring rights of Left Lane et al. to the recordings,
- II that Sony Music NL be ordered to cooperate with the migration of the recordings to Left Lane B.V.,
- III that Sony Music NL be ordered to cancel its registrations relating to the recordings with world-wide neighbouring rights organisations,
- IV that Sony Music NL be ordered to allow the auditor of Left Lane and/or Stehr access to all books and records relating to the world-wide exploitation of the recordings by Sony Music NL and to allow the auditor to inspect all source files necessary therefor,
- V that Sony Music NL be ordered to present an itemised statement to Left Lane et al. and to furnish statements of all world-wide sales of the recordings, including the monies collected from neighbouring rights by or on behalf of Sony Music NL, and to pay all related amounts to Left Lane B.V., to be increased by the statutory interest,
- VI that Sony Music NL be ordered to present an itemised statement to Left Lane et al. and to furnish statements of sales of the recordings by Ultra Records in the United States and Canada and to make it clear as of which time the royalty increases of Ultra Records should have occurred, and to pay the related amounts to Left Lane et al., to be increased by the statutory interest,
- VII that Sony Music NL be ordered to account for and pass on the monies which it, the SME branches, its subsidiary, or shareholding Ultra Records, or its sub-licensees might yet receive in the future from the exploitation of the recordings and collection of neighbouring rights, to Left Lane et al.,

- VIII that Sony Music NL be ordered to pay a penalty of € 50,000 if it acts in contravention of one of the orders claimed under I, II, III, IV, V, VI and VII, and € 5,000 for every day (or part of a day) that the infringement of said orders continues,
- IX that Sony Music NL be ordered to pay the costs of these proceedings in accordance with Article 1019h Dutch Code of Civil Procedure (DCCP), to be increased by the costs arising after judgment is passed and the statutory interest thereover,
- X that the term referred to in Article 1019i DCCP be fixed at six months.

3.2. Left Lane et al. presented the following (in short) as the basis of its claims.

i It ensues from the Waves Agreement and the Ultra Agreement that Sony Music NL has its own settlement obligation with regard to Left Lane et al., including with regard to the exploitation of the recordings in the United States and Canada. This settlement must take place 'at source'. This means that in order to audit the sales of the recordings, it is necessary for Left Lane et al. to possess the source data relating to said sales. Sony Music NL and Ultra Records refuse to furnish said source data, for which Sony Music NL can be held responsible as (co-)contracting party.

In addition, Left Lane et al. and Sony Music NL agreed an audit, which would be pointless without inspection of the source data relating to the recordings. By not providing the necessary data for the audit, Sony Music NL is in serious breach of the performance of the Waves Agreement, the Ultra Agreement and the termination agreement.

ii Alternatively, Left Lane et al. is claiming presentation of the data requested by the auditor on the basis of Article 843a DCCP.

iii Sony Music NL furthermore seriously neglected its obligations under the Waves Agreement by not (timely) collecting and passing on the monies from neighbouring rights with regard to the recordings.

iv Sony Music NL failed to present a timely statement of the sales over the second half of 2018 of Ultra Records and to settle this with Left Lane et al. Over the first half of 2019 Sony Music NL did not present a correct and complete settlement of the royalty income from the United States and Canada.

v Lastly, Sony Music NL failed to present an accurate royalty specification (including a presentation of the royalty increases). It is reasonable to assume that the *Waves remix* reached 'multi platina status' (2,000,000 sales) in 2015, because in January 2017 it reached 'multi platina' status twice (4,000,000 sales) and the hit was released in 2014. This means that Sony Music NL applied the increases of the royalties too late. Sony Music NL did not make it clear in its royalty statements as of when it precisely owed those increases and on the basis of what.

3.3. Sony Music NL (in short) presented as arguments against the claims of Left Lane et al. that the claims of neither Left Lane, nor Stehr were admissible and that Sony Music NL always correctly settled up, so that there has been no breach. According to Sony Music NL it does not ensue from the agreements with Left Lane et al. that it has any individual obligation to check the amounts and payments passed on from abroad or to request underlying documents. Nor can it do so, as it has no right to inspect the books abroad. In addition, there is no reason to doubt the statements of a sister company.

The calculation of the royalty increases takes place on the basis of the Soundscan data. The 'multi-platina' status cannot serve as substantiation of the assertion that an increase of the royalties should have occurred. Because Ultra Records had passed on excessively low numbers for the period second half of 2016 up to and including the first half of 2019, it sent modified statements to Sony Music NL in January 2020 and February 2020, who in turn reported these amounts to Left Lane et al. in the statement of the second half of 2019.

The latter sent an invoice in connection with said amounts, which Sony Music NL paid.

The statement of 30 March 2020 and the retrospective payment were effected in time.

Delay between collections abroad and passing this on to Sony Music NL is common, there is nothing Sony Music NL can do about that. The agreements between the parties must therefore not be interpreted in such a way that the statements to be furnished must be so up to date that they must set out what amounts foreign establishments received in the period of the statement itself.

With regard to the neighbouring rights, Sony Music NL always passed on the amounts it received from third parties. After questions from Left Lane et al. in this respect it did indeed turn out that too little was transferred. Sony Music NL paid Left Lane et al. an advance of € 225,000 on the basis of an estimate of the sales up to the second half of 2019. After specification by Ultra Records it turned out that the advance was too high, it still has not been caught up. Sony Music NL disputes that the neighbouring rights in various countries were not claimed.

Sony Music NL asserts that it ensues from the foregoing that there are no grounds for unilateral termination (cancellation) of the Waves Agreement, the Ultra Agreement and clauses 4, 5, and 11 of the termination agreement. Left Lane et al. transferred the rights to the recordings to Sony Music NL in the agreements. There has thus been no infringement of Left Lane et al.'s rights, so that it does not have an interest in its claim to cease such. This is the position of Sony Music NL.

3.4. The assertions of the parties, in so far as relevant, will be discussed in further detail below.

#### **4. The evaluation**

4.1. The parties have elected Amsterdam District Court as the competent court and for the application of Dutch law.

4.2. The requested relief is based on the extrajudicial cancellation of 4 February 2020 and the breach which forms the grounds therefor. There is an urgent interest on the part of Left Lane et al. in obtaining an opinion regarding the question whether the cancellation will be upheld in these preliminary relief proceedings.

4.3. It must first of all be reviewed who the contracting parties are. The agreements were entered into with Stehr, trading under the name Left Lane Recordings. In the letter of 4 February 2020 the Waves Agreement, the Ultra Agreement and clauses 4, 5 and 11 of the termination agreement were extrajudicially cancelled on behalf of Left Lane B.V. According to Stehr he transferred his rights and obligations under said agreements to Left Lane B.V. Sony Music NL disputes this, but in its letter of 22 January 2020 (which preceded the cancellation letter) it referred to Left Lane as "*formerly trading under the name Left Lane Recordings*". It then called the agreement of 1 November 2013 (the Waves Agreement) "*the agreement between SME and Left Lane B.V.*". Left Lane et al. asserts that all assets of Stehr's sole trader business were transferred by deed to Left Lane B.V. By in its letters apparently assuming such, Sony Music NL created the reasonable expectation on the part of Left Lane et al. that it had agreed to such transfer by Stehr to Left Lane B.V. Consequently the parties satisfied the statutory requirements of transfer (see Article 6:159 of the Dutch Civil Code). This also includes the transfer of the IP rights. In any event, since the end of 2019 the contracting party of Sony Music NL and Ultra Records is thus no longer Left Lane Recordings but Left Lane B.V.

4.4. Sony Music NL has argued that Left Lane et al.'s claims must be declared inadmissible in so far as they are directed at third parties. However, the claims only seek orders and determinations regarding Sony Music NL. It will be evaluated whether those claims can be awarded, but this does not stand in the way of the admissibility of the claims of Left Lane et al.

4.5. The core of the dispute is that according to Left Lane et al., Sony Music NL did not perform its obligations under the agreements. It gave Sony Music NL notice of default in this respect by letter of 19 December 2019 and made a number of reproaches against Sony Music NL.

4.6. With regard to the question whether these reproaches are justified, it must be reviewed what the parties agreed. Toward that end the agreements must be interpreted. The decisive factor in such interpretation is the meaning which each of the parties could reasonably attribute to the agreements in the given circumstances and what they could reasonably expect from each other in this respect (the Haviltex criterion).

4.7. In the Waves Agreement, in return for the payment of royalties, Sony Music NL was given a ten-year exclusive world-wide license to exploit all releases, mixes and remixes (including the Robin Schulz Remix) of the single Waves. The agreement permits Sony Music NL to grant sub-licenses to local Sony Music entities or to third parties. In the Ultra Agreement, Ultra Records was designated as the local agent (affiliate) of Sony Music NL for the United States and Canada. With regard to digital recordings, Sony Music NL must base the royalties on the revenue "at source". It was agreed that Sony Music NL would furnish a statement of the royalties every half year, within three months after 30 June and 31 December, payment of which was to be effected within 30 days after the invoice date. It was furthermore agreed that Left Lane may inspect the books of Sony Music NL a maximum of once a year. The parties later agreed the same with regard to Stehr's other music recordings.

4.8. According to Left Lane et al. these agreements mean that Sony Music NL has an independent obligation to present a statement of all sales of the recordings, to apply the royalty agreements and to furnish half-yearly statements thereof. It may be expected of Sony Music NL that it, to be able to perform these agreements, possesses the source data ('at source') of all sales, including those of the sub-licensees such as Ultra Records. Only then can it pay Left Lane et al. the royalties in time and based on insight.

4.9. Sony Music NL disputes this. It argues that it has no control over the sub-license holders and can at most ask them to provide information. This defence fails to note that Sony Music NL made an unconditional agreement in the Waves Agreement to present an independent statement of all royalties to be paid and to allow Left Lane B.V. to inspect its books. Left Lane B.V. was allowed to interpret this in such way, that Sony Music NL has taken on the obligation to itself ensure that the statement of the royalties was correct and clear. In line with this, it was also allowed to interpret this in such way that Sony Music NL itself would see to it that the royalties would be paid in time. These are core obligations of Sony Music NL. It was thus not agreed that Sony Music NL only has to make payment when it has itself received the payment of the royalties from the sub-licensees, as Sony Music NL has argued.

4.10. Sony Music NL points out that it has to suffice with the amounts which are passed on to it and that it may base its actions on the statements provided to it by its sub-licensees. It does not have to check those statements, nor can it do so. The Sony entities (such as Ultra Records) report to a separate royalty department of Sony Music which then reports these data to Sony Music NL. Sony Music NL's arguments continue that in the event of an ambiguity or incongruency, Sony Music NL puts questions to the relevant sub-licensee. However, this course of affairs is not in accordance with the interpretation set out above with regard to the agreements between Sony Music NL and Left Lane B.V. In so far as Sony Music NL does not have certain data at its disposal, this is contrary to such agreements. The consequences thereof must remain at Sony Music NL's expense and it cannot hold them against Left Lane B.V.

4.11. It ensues from the foregoing alone that Sony Music NL is in breach of the performance of its obligations and that these breaches justify the extrajudicial cancellation by Left Lane B.V.

4.12. It ensues therefrom that the exploitation rights to the recordings revert to the party entitled thereto, Left Lane B.V. Sony Music NL has argued that it is the entitled party, because the rights to the recordings were allegedly transferred to it in the agreements between the parties. The title of the Waves Agreement "*Exclusive license agreement*" makes it sufficiently clear, however, that the parties intended to give Sony Music NL exclusive permission to exploit Left Lane B.V.'s rights to the recordings, not the transfer of those rights themselves. It is not in dispute that Sony Music NL is currently continuing the exploitation of the recordings. By doing so it is infringing the rights of Left Lane B.V., which infringement must be ceased. This means that Sony Music NL not only may no longer exploit the recordings itself, it may also no longer do so via its sub-licensees. All of this leads to the conclusion that the claims under I, II and III of the relief sought in the summons will be awarded. The monies which were received after the extrajudicial cancellation or which will yet be received by Sony Music NL, or by its sub-licensees ('pipeline fees') with regard to the exploitation of the recordings and collection of neighbouring rights will have to be passed on to Left Lane B.V., with accounts, so that claim VII will also be awarded. No penalty will be attached to this payment order (Article 611a(1) DCCP).

4.13. Accounts will have to be presented for the received monies from the exploitation and the collection of neighbouring rights of the recordings in the period that the agreements were in effect and, in so far as this has not yet occurred, payment must be made. Left Lane et al. asserts in this respect that Sony Music NL has not presented a statement of the sales over the second half of 2018 by Ultra Records. An accurate and complete settlement of royalty income of the United States and Canada is lacking for the first half of 2019. The neighbouring rights over the first quarter from the United States are lacking and all royalty income over the first quarter of 2019 of *Digital Service Providers* have not been reported and settled, according to Left Lane et al. Sony Music NL has argued that it only received an amount from Ultra Records at the beginning of 2020, in connection with the exploitation of the recordings in the second half of 2018, which consequently only ended up on the statement after 30 June 2020. The amount was paid out to Left Lane B.V. via the statement of 30 March 2020. The amounts relating to the first half of 2019 were included in the statement of the second half of 2019, for which Left Lane B.V. sent an invoice, which Sony Music NL paid. Sony Music NL acknowledges that it is possible that the first quarter of 2019 may not be on the statements it furnished and asked Ultra Records to check this.

4.14. What further amounts Sony Music NL still owes requires an investigation of the facts that exceeds the scope of these preliminary relief proceedings. It is sufficiently plausible at this point, however, that not all amounts owing have been accounted for and settled, in conformity with the agreements. With regard to the substantiated assertions of Left Lane et al. (set out under 4.13), it would have been the responsibility of Sony Music NL to provide insight into what amounts were collected world-wide with regard to neighbouring rights and what amounts in royalties are owing to Left Lane and have or have not been paid, including: a statement from which it can be determined what royalty rate applied at what time. It did not do so. Left Lane et al. presented a substantiated assertion that the royalty increases, the 'sliding scales' (see under 2.8) agreed in clause 3 of the Ultra Agreement, have not been applied or have not been applied correctly. Sony Music NL disputes that this is the case, but has not submitted the source data which can substantiate that assertion (the *Soundscan* data). Left Lane B.V. has an urgent interest in itemised statements, and complete and accurate statements of all world-wide sales of the recordings.

The claims under IV, V and VI will therefore be awarded. The alternative ground of the claims, the invoking of Article 843a DCCP, need thus not be discussed.

4.15. The claim to allow the auditor access to all books and documents relating to the world-wide exploitation of the recordings and to allow inspection of all necessary source files will therefore also be awarded. Up to now Sony Music NL has not complied to a sufficient degree with its contractual obligation to allow inspection, so that Left Lane B.V. is now entitled to the openness which up to now has been insufficiently displayed.

4.16. As performance incentive, the claimed penalty will be awarded, on the understanding that it will be moderated and a maximum will be set, as stipulated in the decision.

4.17. Sony Music NL, as the party held to be in the wrong, will be ordered to pay the full court costs pursuant to Article 1019h DCCP. The amount of € 20,423.48 claimed by Left Lane et al. is deemed reasonable and proportional. The costs on the part of Left Lane et al. are fixed at:

- court fee:	€	656.00
- counsel fees and disbursements:	€	<u>19,767.48</u>
<b>Total:</b>	€	<b>20,423.48</b>

to be increased by the costs arising after judgment and the statutory interest.

4.26. The costs arising after judgment will be awarded in the manner set out in the decision.

## 5. The decision

The preliminary relief judge

5.1. orders Sony Music NL to cease and desist every infringement of the neighbouring rights of Left Lane et al. to the recordings as stated in Exhibit 1 with the summons,

5.2. orders Sony Music NL to cooperate in the migration of the recordings to Left Lane B.V., by digitally transferring the recordings within 7 (seven) working days after service of this judgment to the distributor of Left Lane B.V.,

5.3. orders Sony Music NL within 14 (fourteen) days after service of this judgment to cancel its registrations relating to the recordings with world-wide neighbouring rights organisations, while sending Left Lane B.V. an overview of the neighbouring rights organisations through which Sony Music NL made claims and collections,

5.4. orders Sony Music NL within 14 (fourteen) days after service of this judgment to allow Left Lane B.V.'s auditor access to all books and documents relating to the world-wide exploitation of the recordings, on the basis of independent investigation by the auditor and to allow the auditor to inspect (with a digital copy to Steenhuis) all necessary source files, concerning:

- all agreements and amendments thereto between Sony Music NL, Ultra Records and/or other entities belonging to the Sony Music concern with regard to recordings of Left Lane B.V., entered into between 1 November 2013 and 10 July 2020,
- all joint venture or profit statements relating to those recordings which were issued between 1 November 2013 and 10 July 2020 to Sony Music NL,
- all settlements or accountings relating to those recordings which were issued to Sony Music NL between 1 November 2013 and 10 July 2020,

- d. all royalty statements and documents which were issued to Sony Music NL between 1 November 2013 and 10 July 2020,
- e. a statement of the (sub-)licenses which Sony Music NL granted to third parties, including the licenses which were granted for the 'processing' of those recordings in physical or digital compilations,
- f. a statement of all sales of those recordings and the related 'at-source' income in the United States, Canada, Germany, Denmark, New Zealand, Sweden, the United Kingdom, Italy, France, Brazil, Russia and Australia, with submission of the source data, and statement of the gross proceeds,
- g. a statement of the total number of physical copies with those recordings which Sony Music NL and its (sub-)licensees have in stock,

5.5. orders Sony Music NL within 14 (fourteen) days after service of this judgment to present an itemised statement to Left Lane et al. and to furnish statements of all world-wide sales of the recordings, as of the start of exploitation of the recordings by Sony Music NL until the date that Sony Music NL ceases the exploitation of the recordings, including the monies collected by or on behalf of Sony Music NL from neighbouring rights until the time of cancellation of Sony Music NL's registration with the relevant neighbouring rights organisations, and to pay all related amounts to Left Lane, to be increased by the statutory interest as of the date of the summons until the day of full payment,

5.6. orders Sony Music NL within 14 (fourteen) days after service of this judgment to present an itemised statement to Left Lane et al. and to furnish full and accurate statements of sales of the recordings by Ultra Records in the United States and Canada as of the start of the exploitation of the recordings by Sony Music NL and Ultra Records until the date that Sony Music NL and Ultra Records cease the exploitation, and to provide insight as to the time as of when the royalty increases of Ultra Records should have occurred, and to pay the related amounts to Left Lane et al., to be increased by the statutory interest as of the date of the summons until the day of full payment,

5.7. orders Sony Music NL to account for and pass on the monies which Sony Music NL and its (sub-)licensees might receive in the future (pipeline fees) from the exploitation of those recordings and collection of neighbouring rights, to Left Lane B.V., in conformity with the settlement system as described in the Waves Agreement,

5.8. orders Sony Music NL after service of this judgment to pay a penalty to Left Lane et al. of € 10,000 if it acts in contravention of one of the orders set out under 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 and € 5,000 for every day (or part of a day) that the infringement of one of those orders continues, up to a maximum of € 500,000,

5.9. orders Sony Music NL to pay the court costs, fixed up to the judgment on the part of Left Lane et al. at € 20,423.48,

5.10. orders Sony Music NL to pay the costs arising after this judgment, estimated at € 157 in counsel fees, to be increased by € 82 and the costs of the writ of service in the event this judgment is served, all to be increased by the statutory interest thereover as of fourteen days after the service of this judgment until compliance with the judgment,

5.11. fixes the term as referred to in Article 1019i DCCP at six months after the date of this judgment,

5.12. declares this judgment to be immediately enforceable,

5.13. dismisses any additional or different claim.

This judgment was passed by M. van Walraven, preliminary relief judge, assisted by J. Dekker, court clerk, and pronounced in public by H.C. Hoogeveen on 10 September 2020.

Signature

Signature

ISSUED AS JUDICIAL OFFICER'S COPY

The court clerk of  
Amsterdam District Court

Music Business Worldwide (copy)