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Georgia High Court Rules Internet Streaming Of Pre-1972 Recordings Isn't Piracy

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MEDIA COMPANIES THAT stream music recordings made prior to 1972 over the internet without paying royalties or licensing fees are not violating Georgia's criminal record piracy law, the state Supreme Court ruled in a unanimous opinion handed down Monday.

The ruling is a win for iHeart-Media, owner of hundreds of AM and FM radio stations across the country, and for iHeartRadio, a radio streaming service that allows listeners to customize their music selections and access them for free through a variety of electronic devices.

The high court's ruling stems from a federal civil racketeering case now pending in the Middle District of Georgia where iHeartMedia was sued by former Chicago record company owners Art Sheridan



The Flamingos at the time of recording 'I Only Have Eyes For You'. Anti-clockwise from bottom left: Zeke Carey, Tommy Hunt, Paul Wilson, Jake Carey, Terry Johnson and Nate Nelson.

and Barbara Sheridan over iHeart's web broadcasts of vintage doo-wop, jazz and rhythm & blues recordings to which the Sheridans hold the rights.

Art Sheridan, founder of Chicago's Chance Records and Sabre Records, holds the contracts and intellectual property rights to dozens of recordings made in the '50s and '60s.

The legal question at the heart of the federal case and Monday's state Supreme Court ruling addresses the broadcast of recordings made prior to 1972, the year the U.S. Congress passed a law extending copyright protection to music recordings. That law did not extend copyright protection retroactively to music recordings made

prior to its passage. Instead, Congress left it to the states to decide whether or how to protect the owners of the intellectual property and contract rights of older master recordings, according to court pleadings.

Last September—after iHeart’s attorneys argued that the Sheridans’ claims should be tossed because the state of Georgia precludes radio and television broadcasts from being considered a form of record piracy—U.S. District Judge Leslie Abrams asked the Supreme Court of Georgia whether under Georgia laws internet streaming could be considered a form of radio broadcast exempt from the state record piracy statute.

The state Supreme Court heard oral arguments in January.

On Monday, the Supreme Court answered the certified question with a unanimous yes.

Justice Harold Melton wrote that online music streaming services qualify as “a related use” to a radio broadcast transmission and that streamed sound recordings are “qualitatively the same” as traditional AM/FM radio broadcasts even though “some technological differences exist.”

Melton noted that iHeart’s online broadcasts offer music

tracks “for a single use” that remain on a listener’s electronic device only temporarily. “There is,” he concluded, “no significant difference in either the user experience or the nature of the broadcast of sound recordings between terrestrial AM/FM and internet transmissions of the type offered by iHeartMedia in this case.”

In a footnote, Melton noted that the U.S. Court of Appeals for the Second Circuit in New York last year in a similar case against Pandora Media defined online music streaming as “radio,” regardless of any technological differences between traditional radio and internet broadcasts.

In Abrams’ order certifying the question to the Georgia Supreme Court, the federal judge noted that the U.S. Court of Appeals for the Eleventh Circuit in Atlanta considered a similar case in Florida against Sirius XM Radio and deferred to the state Supreme Court of Florida to interpret Florida’s statute on pre-1972 recordings.

The Sheridans have filed more than a dozen similar actions in California, New York, Florida, New Jersey and Illinois challenging the right of music streaming services to make pre-1972 music recordings available to listeners

without licensing agreements or royalty payments, according to iHeart’s attorneys. The company is represented by Daniel Griffin and Michael Kohler at Atlanta’s Miller & Martin, Latham & Watkins attorneys Andrew Gass and James Lynch in San Francisco and former U.S. Solicitor General Gregory Garre and Jonathan Ellis in Washington.

The Sheridans’ counsel in the federal case—California attorneys Tony Abner of Abner & Fullerton and Justin Sobodash and attorneys Matthew Galin and Howard Foster of Chicago’s FosterPC—argued that as technology has changed, so must the concept of recording piracy. “In the digital age, piracy takes on a digital form,” they contended in a federal pleading, calling iHeart’s ability to earn millions of dollars in advertising on its pre-1972 music broadcasts “modern-day corporate piracy.”

On Monday, Abner said he was not aware of the Georgia Supreme Court ruling and would have no comment on it. The Daily Report has contacted Sobodash and Foster but have not yet reached them. iHeart attorneys Griffin and Ellis referred questions to Garre, who could not be reached.