



The European Law Students' Association
THE NETHERLANDS

ELSA THE NETHERLANDS
NATIONAL MOOT COURT COMPETITION 2016
CASE FOR THE SEMI-FINALS



The European Law Students' Association
THE NETHERLANDS

Case for the semi-finals

In 2014, online sales (downloads) of digital music have remained concentrated in the hands of a few players only. These players operate worldwide and compete with one another in almost every country. The bulk of the sales are divided between three platforms (online stores): Indigo's Blue-Tunes (60%), Walkyrie Music (11%) and Sunday Play Music (18%), the rest being spread over a range of platforms. The precise percentages vary little from one country to the other, even though it is well known that music tastes and favourite artists differ widely from one country to the other.

Over the last 5 years, Blue-Tunes has gone from 75% to its current 60%, while Walkyrie has remained relatively constant, and Sunday has surged from nothing to 18%. The overall volume of sales by all firms has stopped increasing in 2013 and is now slightly decreasing. The main event of 2014 was the surge in streaming subscriptions. Contrary to music purchased via the platforms above, which takes the form of a downloaded file, streaming involves playing files from an online database; these files are not downloaded. Streaming comes close to radio, in technical terms. It is available either for free (with restrictions and advertising) or for a monthly subscription fee. At this point in time, the total sales of streaming subscriptions are still significantly lower than the total sales of downloads. However, streaming is now perceived by most music fans as a clear substitute to downloading music, and the sales of streaming subscriptions have been booming. None of Indigo, Walkyrie or Sunday are leaders in streaming.

Sunday's Plans

Sunday's increasing share of music downloads over the past years is primarily due to the widespread adoption of its operating system (Robot) in mobile devices, where it equips more than half of the new devices sold (smartphones, tablets). Sunday is now planning its next moves. It is the leader in research on driverless cars and home automation systems (systems which control all the functions of a home, such as heating, cooling, lighting, security, etc.). R&D costs for developing these products are massive, and Sunday is ahead of its actual and potential competitors by 2-3 years in product development. Both these products – driverless cars and home automation systems – are expected to be commercially released within 5 to 10 years. Sunday has made it known that both these products would incorporate playing music as one of their functions, but that only music purchased from Sunday (either by download or streaming) would be playable.

Indigo's deal with the music-producing firms

Indigo built its position in music downloads in the 2000s, on the back of the music industry, by offering individual songs to download at EUR 0,99 apiece. Despite that, in recent years, the music industry and Indigo have become much friendlier to one another. In 2013, Indigo announced a new service called Blue-Tunes Match: for EUR 25/year, Indigo customers can purchase 'amnesty' for their music collection. Any illegal downloads found on their devices will be treated as legal ones. Indigo is able to offer this to its customers because it has secured the agreement of every significant music producing firm (e.g. Sony BMG, Universal, EMI, Warner and the main independent labels) to this unique 'amnesty' formula. Each of the respective



The European Law Students' Association

THE NETHERLANDS

agreements concluded between Indigo and one of these music firms stipulates that such an 'amnesty' formula is only made available to Indigo, and not to any other firm active in selling music downloads or streaming. All of these agreements were negotiated simultaneously and concluded on the same day.

Your task

Walkyrie is very worried about the announcement by Sunday regarding the music playing function on driverless cars and home automation systems, all the more since Walkyrie is not planning to develop either driverless cars or home automation systems of its own. It would also like to offer to its customers the same type of deal as Blue-Tunes Match, but music firms have turned its request down, invoking their agreement with Blue-Tunes.

Answer ALL of the following questions:

Is there a basis under EU competition law to challenge Sunday's announcement and force Sunday to allow music purchased from Walkyrie to be played on Sunday's driverless cars and home automation systems?

Is there a basis under EU competition law to challenge Indigo's agreements with the music firms, so that Walkyrie could negotiate similar agreements to offer a competing formula to its own customers?

Refer to materials such as EU legislation, cases, and others, as appropriate to back your reasoning. Feel free to use general information about general trends and developments in the music industry, but please do not use your knowledge about a particular firm/product beyond what is described above.