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## FACTSHEET: SHEARER LITIGATION

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### **Vivendi Anti-Competition and Accounting Fraud Practices**

Despite the success of *Spinal Tap* the band, *This Is Spinal Tap* the film and its two cinema releases, the albums, TV, video and music sales, and the exploitation of associated merchandise licenses. the film's creators, producer, and participating cast have yet to be paid fairly for their hard work and creative talents. This is due to the questionable anti-competitive and fraudulent accounting practices applied by the Vivendi group and related entities. Harry Shearer has filed a lawsuit to expose and correct this conduct.

### **Creators Barred from Sharing in *Spinal Tap* and *This Is Spinal Tap* Success**

- The film charting the disastrous U.S. tour by spoof rock band Spinal Tap was produced on a shoestring budget of approximately US\$2.25 million dollars, but its enduring popularity has generated tens of millions of dollars in revenue in the thirty years since its original theatrical release.
  - To this day, the film enjoys popularity on television, home video, and other media, including a 25th Anniversary Blu-Ray DVD release in 2009.

In an accounting report to which Shearer gained access around November 2013, Shearer learned the following:

- Despite the enormous success of this beloved film, Vivendi/StudioCanal claimed the film took until 2011 to recoup.
  - By 2011, the film reportedly had grossed more than US\$12 million.
- Despite the success, according to Vivendi/StudioCanal the four creators (McKean, Guest, Shearer and Reiner) were entitled to a profit share of only US\$29,514.
- The four creators' share of total worldwide merchandising income between 1984 and 2006 was calculated by Vivendi/StudioCanal at US\$81.
  - However, a quick Google search today shows over two million hits for items sporting the Spinal Tap brand.
- The four creators' share of total income from worldwide music sales between 1989 and 2006 was calculated by Vivendi/StudioCanal at US\$98 - despite numerous album and singles releases.
- In 2004, Vivendi/StudioCanal received a settlement from MGM Home Video for more than US\$1.6 million dollars for underreported VHS and DVD revenues. This amount was never reported, or submitted to the creators.
- In the years after the film's release, undocumented marketing and promotion expenses have totaled more than US\$2.5 million dollars.

### **Creators Received Inconsistent, Sporadic, and Incomplete Participation Statements**

In the 2013 report, Shearer also learned that Vivendi/Studiocanal sent inconsistent, sporadic, and incomplete statements.

- Statements were only sent to the management company of one creator and not to all four.
- When repeated requests were made for missing statements, some, but not all, were provided "as a courtesy" and many requests were routinely ignored.
- Participation Statements for the years since Vivendi acquired the film (post 1989) were not provided, despite repeated requests.

- Statements for a three-year period in which there was great commercial activity (coinciding with a tour by the band, remastered sound recordings, a theatrical re-release in several countries and numerous video releases) have also not been provided despite repeated requests.
- Figures recorded on statements that do exist are inconsistent and not reflective of the value of worldwide sales, re-releases and live performances over the years.

### **Parties Involved in Exploiting *This Is Spinal Tap***

Currently, exploitation of the different aspects of the film and music are managed by various entities:

- EMI Music Publishing (part of Sony/ATV and therefore Sony Entertainment), controls music publishing rights.
- MGM (also part of Sony Entertainment) accounts to Canal+ for U.S. video rights.
- Vivendi owns Canal+.
- Vivendi owns StudioCanal S.A. & StudioCanal Image.
- Vivendi owns Universal Music Group which controls the sound recording rights.
- Theatrical exploitation rights have been managed on behalf of Vivendi/StudioCanal by Rialto Pictures.

In all, since the film's inception, there have been at least 23 entities with ownership rights to the music, film and merchandise. It is a truly complex web of intra-corporation entity ownership. The revenue receipts seem to bear little correlation to the timing of increased commercial activity (new album, CD releases, etc.).

### **Vivendi's Involvement in France**

- The film's exploitation has been managed and controlled by Vivendi/StudioCanal or predecessors in interest in France since 1989.
- Management of *This Is Spinal Tap* rights was directed by Ron Halpern, Executive Vice President of International Production and Acquisitions, who is based in Paris. Mr Halpern is a named defendant in this litigation.
- On 14 September this year, the European Commission issued a proposed draft Directive (*The Directive of the European Parliament and of the Council on Copyright in the Digital Single Market*). Crucially this text includes two key provisions recognising the value gap that commonly exists between authors & performers and those exploiting their works.
- Revenue from licensees and joint-ventures flow to StudioCanal in Paris, France.

### **Creators have Filed to Reclaim Control of their Rights**

Separate to this litigation, but simultaneously, the four creators have agreed that together they will send notice of termination under the U.S. Copyright Statute (*Title 17 US Code §203*) to reclaim control of their rights.

- StudioCanal Image, a Vivendi subsidiary, is the last listed owner for federal registrations for the Spinal Tap mark.
- StudioCanal Image/Vivendi abandoned its use of the Spinal Tap mark, and federal registrations for the Spinal Tap marks were subsequently cancelled by the USPTO in 2011.
- Vivendi and its entities did not oppose a trademark application submitted in 2013 by Heretic Brewing Company to register the mark, Spinal Tap, in connection with beer products.