



Neutral Citation Number: [2020] EWHC 1872 (Ch)

Case No: IL-2019-000150

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST

Royal Courts of Justice
The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 17/07/2020

Before :

MR JUSTICE BIRSS

Between :

PERFORMING RIGHT SOCIETY LIMITED

Claimant

- and -

QATAR AIRWAYS GROUP Q.C.S.C.

Defendant

Edmund Cullen QC (instructed by **Wiggin LLP**) for the **Claimant**
Nicholas Saunders QC and **Chris Aikens** (instructed by **CMS Cameron McKenna Nabarro**
Olswang LLP) for the **Defendant**

Hearing dates: 18th June 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE BIRSS

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30pm on 17th July 2020.

Mr Justice Birss :

1. This is an application by the defendant, Qatar Airways (QA), to stay a claim of worldwide infringement of copyright, on grounds of *forum non conveniens* or alternatively on case management grounds.
2. The claimant, Performing Right Society Ltd (PRS), is a collecting society whose members comprise writers, composers and publishers of musical works. PRS is the assignee from its members of (i) the right to perform in public the musical works created by them and (ii) the right to communicate those works to the public within the meaning of sections 19 and 20 of the Copyright, Designs and Patents Act 1988 (“the UK Performing Right”). There are over 5.5 million musical works whose UK Performing Right is owned by PRS (“the Repertoire Works”). The Repertoire Works are released as sound recordings and used in films, television shows, games and other audio-visual works.
3. PRS is not only the assignee of the UK rights. PRS is also assigned the equivalent to the UK Performing Right for the Repertoire Works for all countries in the world (“the Worldwide Performing Rights”).
4. QA is a passenger airline and the national airline for Qatar. QA has 206 commercial passenger aircraft in operation and operates scheduled passenger flights to more than 160 destinations in 80 countries. During flights, QA aircraft will pass through the airspace of non-destination countries as well as destination countries and international airspace. The flight routes are flexible and subject to change according to factors such as weather. QA calculated that, in January 2020, QA aircraft utilised the airspace of 123 countries.
5. QA offers an inflight entertainment system known as “Oryx One” (“the IFE System”). Some of the details of the IFE System are the subject of dispute. PRS asserts that passengers on a QA aircraft can access audio / audio-visual content via individual onboard screens and headphones or via an “Oryx One Play” application that is downloaded on the passenger’s laptop, mobile device or tablet. PRS asserts that an additional “Oryx One” application allows passengers on a QA aircraft to create playlists of content prior to boarding the flight. PRS asserts that passengers can access the IFE System before, during and after each flight. Ms Rachel Alexander, a partner of PRS’ solicitors, states, in her witness statement in support of PRS, that she understands from individuals who have flown with QA that the IFE System can be accessed by passengers while the aircraft is on the ground.
6. Mr Enser, a partner of QA’s solicitors, gave two witness statements in support of QA’s application. In those witness statements, he states that the “Oryx One Play” application is available only on those aircraft that are not equipped with the “Oryx One” onboard screen system and that it cannot be used on laptops. He states that the “Oryx One” application cannot be used to stream audio/audio-visual content save for some trailers and scheduled content can only be transferred from the application to the onboard entertainment screen if the aircraft is fitted with near field communication. He states that the IFE System is only provided during a flight and not before or after.
7. PRS asserts that the Repertoire Works are included in the content provided on the IFE System. At least 5,800 of the Repertoire Works are said to be made available through

the IFE System. QA accepts that, under UK law, PRS is likely to be the owner of the UK Performing Right that is embodied in at least some of the audio/audio-visual works that passengers of QA are able to listen to or view on QA's aircrafts. However, in relation to the "Oryx One Play" application in particular, Mr Enser explains that it does not have any audio tracks, save for Holy Quran recitation audio, and that the majority of TV and movie titles available on it consist of Arabic and other non-Western titles.

8. It is common ground that airlines are generally granted licences by copyright collecting societies domiciled in the same country as the airline. Collecting societies also tend to have reciprocal agreements that allow them to grant licences in respect of rights assigned to foreign collecting societies. It is also common ground that there is no collecting society based in Qatar. PRS provides a tariff, Tariff AC, to UK registered aircraft but not to foreign registered aircraft. As of May 2020, PRS does not directly license any airline domiciled outside the UK.
9. PRS wishes to license QA in respect of the Repertoire Works on a worldwide or territory-by-territory basis. It also believes that it can obtain an extension to its reciprocal agreements with other collecting societies which would enable it to license works beyond the Repertoire Works. There remains some dispute between the parties as to what proportion of the works utilised by the IFE System would be covered by such a licence.
10. On 23 December 2019, PRS issued a claim in this jurisdiction against QA for a declaration that QA has infringed the Worldwide Performing Rights, an injunction to prevent further infringement and an inquiry for corresponding damages. PRS alleges that:
 - i) when the relevant aircraft is present in the UK, whether on the ground or in the territorial airspace of the UK, the playing or making available of any Repertoire Work through the IFE System amounts to a public performance and / or communication to the public of that work within the meaning of sections 19 and 20 respectively of the Copyright, Designs and Patents Act 1988;
 - ii) when the relevant aircraft is present in Qatar, whether on the ground or in the territorial airspace of Qatar, or when the relevant aircraft is in international airspace, the playing or making available of any Repertoire Work through the IFE System amounts to a public performance and / or communication to the public of that work within the meaning of Article 7(6) and (7) respectively of the Qatari Law No.7 of 2002 on the Protection of Copyright and Neighbouring Rights; and
 - iii) when the relevant aircraft is present in any (other) country that is a signatory to the Berne Convention, the WIPO Copyright Treaty or the TRIPS Agreement, whether on the ground or in the territorial airspace of that country, the playing or making available of any Repertoire Work through the IFE System amounts to a public performance and / or communication to the public of that work within the meaning of corresponding provisions enacted in that country.
11. QA was served with these proceedings within the jurisdiction, namely at the London address of its UK branch. QA accepts that it has been so served and that this court

therefore has jurisdiction as of right. However, QA applies for an order under CPR rule 11(1) that this court should not exercise any jurisdiction which it may have. QA asserts that the appropriate forum for these proceedings is in Qatar and offers an undertaking that it will not challenge the jurisdiction of the Qatari courts to hear the entirety of this claim. PRS accepts that Qatar could have jurisdiction to hear these proceedings but asserts that the most appropriate forum is this court.

12. Given the nature of this application, QA has not served a defence to these proceedings. Mr Enser has, however, set out an outline. In addition to the factual disputes in respect of the IFE System, QA denies, or at least does not admit, that there has been any public performance or communication to the public of the Repertoire Works whether by the playing or the making available of such works. This position applies both to acts in the UK covered by sections 19 and 20 of the Copyright, Designs and Patents Act 1988, acts covered by Qatari law and acts worldwide.
13. I will deal with the *forum non conveniens* issues first and then, if necessary, the stay on case management grounds.

Foreign copyrights and jurisdiction

14. It was common ground that these proceedings are justiciable in this court, despite the involvement of foreign copyright infringement. It was established by the Supreme Court in *Lucasfilm Limited v Ainsworth* [2011] UKSC 39 that the English court can have jurisdiction over claims for infringement of copyright by non-UK acts and under non-UK law where there is a basis for *in personam* jurisdiction. Also, at the hearing the defendant did not rely upon any alleged unavailability of injunctive relief in respect of non-UK acts, although that had been discussed in the evidence. The defendant merely submitted that *Lucasfilm* itself did not mean that the English courts were necessarily the or the most appropriate forum. I agree that the court in *Lucasfilm* was not concerned with the issue of *forum non conveniens* as it arises here (I say that because a different point on *forum non conveniens* was touched on by Lord Walker at paragraph 111 but it is not relevant).

Forum non conveniens - the law

15. The law in this area is well-developed. The leading case is *Spiliada Maritime Corp v Cansulex Ltd (The Spiliada)* [1987] AC 460 in which Lord Goff set out the relevant principles at 476-478. There is no dispute about the applicability of those principles in general but there is a dispute about how those principles may be summarised and there are disputes on points of detail.
16. The defendant has summarised the test in *Spiliada* as follows:

“(1) Is there another available forum which is clearly and distinctly the natural forum, that is to say, the “forum with which the action has the most real and substantial connection”?

“(2) If there is, is England nevertheless the appropriate forum, in particular because the court is not satisfied that substantial justice will be done in the alternative available forum?”

17. The claimant's rival formulation is:

“Stage 1: Qatar Airways bears the burden of satisfying the Court that the Qatari court is an available forum with competent jurisdiction to determine PRS's claim and is clearly or distinctly a more appropriate forum than England for the trial of the issues. If it fails to satisfy the Court of these matters, a stay should be refused.

Stage 2: If the Court determines that the Qatari court is prima facie more appropriate, it must nevertheless refuse to grant a stay if PRS demonstrate that, in all the circumstances of the case, it would be unjust for it to be deprived of the right to trial in England.”

18. The point on onus in the claimant's summary is not disputed but the defendant does criticise the claimant's summary on two grounds, arguing that the court should be careful to not shift the focus of the Spiliada test by ignoring the language in that decision (i) which refers to a real and substantial connection in the first stage and (ii) which does not use language of “deprivation” in the second stage.
19. The claimant responds by pointing out that it has used the same wording as Bryan J in Al Khattiya v Owners and / or Demise Charterers of the Jag Laadki [2018] EWHC 389 (Admlty) at [19-20]. The claimant submits that this wording was commended in the White Book at 6.37.22 and that the language correctly reflects the Spiliada test.
20. I doubt there is any real difference between these summaries in practice. I will employ the defendant's summary because of the two, its language is closer to the words in Spiliada.
21. The second issue is the relevance of the differences in procedure between the English and the Qatari courts. The claimant submits that factors relating to the practicalities of litigation should be considered in the first stage of the Spiliada test. The defendant agreed that issues such as the location of witnesses arose at the first stage but contended (I think) that at least aspects of the points which were debated about expert witnesses (of foreign law) arose at the second stage not the first, referring to Lord Goff in Connelly v RTZ Corporation plc (No 2) [1998] AC 854 at 872G when he said:
- “if a clearly more appropriate forum overseas has been identified, generally speaking the plaintiff will have to take that forum as he finds it, even if it is in certain respects less advantageous to him than the English forum....Only if the plaintiff can establish that substantial justice cannot be done in the appropriate forum, will the court refuse to grant a stay.”*
22. As the defendant says, this passage is clearly focussed on the second stage. The defendant also emphasises the importance of separating the analyses under the first and second stage (Lungowe v Vedanta Resources plc [2019] UKSC 20 per Lord Briggs JSC at [88]).

23. The claimant accepts that Lord Goff's words refer to the second stage but maintains that this does not mean factors relating to practicalities should be ignored in the first stage and also refers to Spiliada but at 478A at which Lord Goff stated:
"So it is for connecting factors in this sense that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction...and the places where the parties respectively reside or carry on business."
24. The defendant submits that the focus of the test at the first stage is to establish the appropriate forum rather than the convenient forum and refers to another passage from Spiliada itself in which Lord Goff (at 475B) stated:
"..I cannot help thinking that it is wiser to avoid use of the word "convenience" and to refer rather, as Lord Dunedin did, to the appropriate forum".
25. In my judgment this second dispute suffers from the risk of attempting to lay down a bright line rule about legal practice and procedure where none sensibly exists. The first stage seeks to establish whether there is another forum with which the action has the most real and substantial connection. As Lord Goff's words at 478A show, there are facets of the practical aspects of the litigation in a given forum that might bear on that issue. If they do then they are relevant at the first stage. On the other hand, some other matters of procedure, and in particular some comparative aspects, to the extent they are relevant at all, are likely to be relevant only at the second stage. The fact that the foreign forum may have features which the claimant would regard as less advantageous is not enough to determine the matter at the second stage. The test is more stringent than that.
26. The third issue, related to the second, is a particular point about costs and how the different rules on litigation cost recovery are to be considered under the Spiliada principles. Both parties drew my attention to the statement by Nourse LJ in Roneleigh v Mii Exports [1989] 1 WLR 619 at 623:
"I do not think that [Lord Goff in Spiliada] was going so far as to say that a costs advantage could never be taken into account in carrying out this balancing exercise. It seems to me that there must be cases where a judge could reasonably and properly come to the conclusion that substantial justice would not be done via proceedings in a foreign forum, if the success of the plaintiff in monetary terms would necessarily and substantially be diminished by costs which he would have to pay there but would not have to pay here."
27. The claimant submitted that an inability to recover litigation costs in Qatar was relevant and referred me to three cases in which the claimant's inability to recover costs contributed to the decision that permission be given to serve out of the jurisdiction: Roneleigh; or to a stay of proceedings being refused despite another forum being the natural forum: The Al Battani [1993] 2 Lloyd's Rep 219 and The Vishva Ajay [1989] 2 Lloyd's Rep 558.
28. The defendant suggested that since the latter two cases were both decided by the same judge (Sheen J) that somehow diminished their significance. It does not. The defendant also submitted that the fundamental test at the second stage was whether

substantial justice would not be done in the rival forum. I accept that. It means that in principle the absence of a system for litigation costs recovery in Qatar as compared to England and Wales is only relevant if it supports such a conclusion.

29. The fourth issue is the relevance of this jurisdiction having specialist intellectual property courts. The defendant submits that this is not a factor and it is an attempt to refer to “the *Cambridgeshire* factor”, being the argument that “*the parties’ advisers have accumulated a body of experience and knowledge in this jurisdiction already*” (*HRH Emere Godwin Bebe Okpabi v Shell plc* [2017] Bus LR 1335 per Fraser J at 42) but that “the *Cambridgeshire* factor” is too narrow to include it.
30. The reverse of this point is the relevance of the Qatari courts allegedly not having expertise in the area of intellectual property. The defendant has referred me to the statement of Jonathan Sumption QC (as he then was) sitting as a Deputy Judge in *Ceskoslovenska Obchodni Banka AS v Nomura International Plc* [2003] ILPr 20 (at [15]):

“..it is accepted by both experts that a Czech judge hearing this dispute would probably not come to it with anything like the same background knowledge or the same experience of commercial documents and large-scale litigation as a Judge of the Commercial Court. However, I decline to deduce from this that Czech judges lack the experience to do justice in a case like this one. For different reasons, the same points could be made about many jurisdictions, including some with highly developed legal system...These courts have to educate themselves by hearing the case, which is the nature of judicial life. This state of affairs no doubt diminishes the efficiency of the system. But it would be absurd to say that substantial justice is not to be had in these places. Specialist Courts such as the Commercial Court are rare in the world of litigation, but even in the Commercial Court, judges have to deal from time to time with complex and wholly unfamiliar fields of business.”
31. The claimant submits that there is no authority that the level of expertise of the Qatari courts cannot be taken into account at all. The claimant refers to *The Varna* [1994] 2 Lloyd’s Rep 41 at 48 in which Lord Justice Clarke said that the point was “*not...of much weight*”, the inference being that in the right case, the point could have more weight.
32. The question of whether the courts have particular expertise is different from a question about the *Cambridgeshire* factors. Both are capable of being relevant, but as the passages from *Ceskoslovenska Obchodni Banka* and *The Varna* show, the former is unlikely to be a point of much weight. The latter point is really about expertise concerning a particular kind of case, not general expertise in an area of law.
33. The fifth issue is the weight that is to be placed on the applicable law when considering the first stages of the *Spiliada* test. The claimant referred me to *Konamaneni v Rolls Royce (India) Ltd* [2002] 1 WLR 1269 in which Lawrence Collins J (as he then was) at [170] stated that “*This is not a factor of great significance in this case because there is no evidence of any difference between English law and Indian law...*”; and a similar statement in *The Al Khattiya* at 244. Accordingly, the claimant submits that, where there is no established difference

between English law and Qatari law, the factor of applicable law is not significant. I will address this point in context below.

34. The sixth issue is the relevance of an alleged risk that the Qatari courts will not apply the applicable law. The claimant again referred me to *The Varna* at 48 in which Clarke LJ said that expertise or experience of the court was not of much weight “*unless it can be shown that the Court will not apply the relevant law to the facts...*”. The claimant also referred to *Novus Aviation v Onur Air Tasimacilik AS* [2009] 1 Lloyd’s Rep 576 at [78] in support, but the defendant submits that the statement there relates to service out of the jurisdiction, not *forum non conveniens*. Either way, although there is a debate about the manner in which foreign law is introduced into proceedings in Qatar, I am not satisfied that the courts of Qatar would not apply the relevant law, foreign or domestic.
35. The seventh issue is a point made by the claimant, that for the defendant to demonstrate that Qatar is the natural forum, the exercise really can only be done sensibly if one knows what is actually going to be in issue, citing *Novus Aviation* (at [31] and [79]). The defendant cautions again that this is a case dealing with service out of the jurisdiction, not *forum non conveniens*, but nevertheless accepts the importance of identifying the likely issues. In my judgment that must be right. In other words, it is relevant in assessing the appropriateness of a given forum to have in mind what the issues in a case are likely to be.
36. The final point is the relevance of the fact that the defendant has been served within the jurisdiction. The claimant refers to *Spiliada* at 476F in which Lord Goff stated that “*...the English court will not lightly disturb jurisdiction so established.*” The defendant seeks to soften this by pointing out that the *Spiliada* principles were formulated for a case in which English jurisdiction had been founded as of right and so this factor is not a separate one over and above the *Spiliada* principles themselves. I accept that.

Forum non conveniens – stage 1

37. For stage 1, it is convenient to address the issues under the following headings:
 - i) the personal connections the parties have to the countries in question;
 - ii) factual connections which the events relevant to the claim have with the countries;
 - iii) applicable law;
 - iv) factors affecting convenience or expense such as the location of witnesses or documents.

Personal connections the parties have to the countries in question.

38. In respect of PRS’ connection to either the UK or Qatar, PRS is a company limited by guarantee and incorporated in England and Wales. It has 480 members of staff, of which only 2 are not based in the UK and none are based in Qatar. Its employees and representatives are primarily native English speakers. PRS envisages calling evidence

from representatives of Global Eagle Entertainment Limited, another company incorporated in England and Wales and a provider of music content to airlines. This evidence would be in respect of the content provided to QA.

39. QA is a Qatari company based in Doha, Qatar and is wholly owned by the State of Qatar. QA has 128 offices in 73 different countries and approximately 46,000 staff worldwide. QA envisages calling evidence from staff based in Doha, Qatar only and this evidence would be in respect of flight data and the IFE System. In respect of the staff based in Qatar, many speak fluent English. Ms Alexander particularly highlights that the Vice President Legal at QA, Mr Rehan Akram, is a graduate of the University of Cambridge and qualified as an English solicitor.
40. QA has a UK establishment, under the name of Qatar Airways Group Q.C.S.C., which is registered as an overseas company at Companies House in the UK. This branch is represented by Mr Gary Kershaw who is based in the UK. Mr Enser states that Mr Kershaw has no connection to these proceedings. Mr Enser also states that the UK company is maintained purely for administrative purposes and that the UK branch assists with UK operations, regulatory compliance and sales only. QA maintains 2 offices in London and, in June 2020, the UK branch employed 220 individuals, although this is expected to fall to 180 by August 2020. QA has a presence at Birmingham, Cardiff, London Harrods, London Heathrow and Manchester. Mr Enser states that these outlets are principally desks staffed by third party handlers doing work on behalf of QA and have no relevance to these proceedings. QA also has a presence in the UK through its private jet charter division. Mr Enser states that these offices primarily act as a showroom for sales purposes and have no relevance to these proceedings. During the hearing, QA also stated that the private jet charter division was not operated by QA and did not utilise the IFE System. Ms Alexander asserts that the UK is an important market for QA and refers to various marketing and financial materials of QA in support. Mr Enser states that, in context, the UK is not a particularly important destination to QA.
41. There was also reference to a convention that there would normally be a licence between a collecting society and an airline in the same country as they are both situated. Each side said this favoured them. The trouble is that what it actually amounts to is simply an observation that in countries in which there is a collecting society and an airline in the same state, the one licenses the other. No doubt that is very sensible but it does not help in the present case because there is no collecting society in Qatar.
42. Overall, each entity, PRS and QA, has a close and genuine link to its home state, the UK and Qatar respectively. It is fair to say that QA has rather stronger links to the UK than PRS has to Qatar but the degree of that difference is small.

Factual connections which the events relevant to the claim have with the countries

43. The events relevant to the claim are the playing of music in the aircraft, or at least the availability of that music. Where that occurs depends on where the aircraft are. Mr Enser gives evidence that, based on a comparison in a representative period, about 98% of QA's flights either start or finish in Qatar, whereas by contrast 5% of QA flights either start or finish in the UK. Mr Enser also explains that UK destinations represent 3.4% of the destinations served by QA. On QA's case the periods in the air

are most significant because the IFE System is only available during the flight itself, but that fact is in dispute. There is no calculation in the evidence as to what proportion of total QA flight time is in international airspace or the airspace of the UK, Qatar or any other country.

44. Plainly therefore the aircraft spend more time in Qatar than they do in the UK. Nevertheless to an appreciable degree relevant acts do take place in the UK. Moreover a great deal of the activity in issue takes place in other countries, neither Qatar nor the UK.

Applicable law

45. It is common ground that, when the relevant aircraft is in Qatar, including Qatari airspace, Qatari law applies to the claims of copyright infringement. It is also common ground that, when the relevant aircraft is in a destination country or its airspace, the law of that country applies. So an aircraft in the UK is subject to UK law. It is also common ground that in international airspace, Qatari law will apply. There remains a dispute about the applicable law when the aircraft is in the airspace of a non-destination country, but for this purpose I will assume (in QA's favour) the law of Qatar applies instead of the law of that non-destination country.
46. Since the aircraft will spend more time in Qatar than they do in the UK, it follows that for a given aircraft in the QA fleet in which acts restricted by copyright are committed in relation to the Repertoire Works, Qatari law will apply for more of the time than UK law. Nevertheless UK law will be the applicable law in relation to those acts carried out in the UK and (see above) relevant acts do take place in the UK to an appreciable degree. 5% (or 3.4%) of flights is a much more than *de minimis* amount. It also remains the case that the law of other states, neither Qatar nor the UK, will be engaged too.
47. Under the rubric of the applicable law, it is convenient at this stage to turn to the arguments about Qatari law and procedure. Both parties produced expert witness evidence. There is a report and supplementary report from Mr Sultan M. Al-Abdulla for QA and a report from Mr Salman Al Ansari for PRS. Both Mr Al-Abdulla and Mr Al Ansari are Qatari lawyers and partners in Qatari law firms and have various other appropriate positions and accolades on their CVs.
48. From an English perspective, Qatar can be regarded as a civil law jurisdiction. Five points in particular arose from the expert evidence.
49. First, the experts disagreed to some extent as to the level of development of copyright law in Qatar. Mr Al Ansari states that the substantive copyright law was only enacted 18 years ago and "has not been litigated as significantly before the Qatari court as other areas of law". He says that the law has not been amended to address recent developments in the area. Mr Al-Abdulla, on the other hand, states that the area is "sufficiently developed to afford adequate protection to numerous international businesses that operate in Qatar". He highlights that there was a copyright law in Qatar before the current version, refers to two reported decisions in relation to IP in 2007 and 2015, one being in relation to copyright, and separately states that court judgements are "not regularly published", which may be some explanation for the low number of reported decisions.

50. I do not doubt that there are few copyright cases in Qatar. However if the suggestion is that the law of Qatar is not equipped to deal with this case, then I would reject it. Qatar clearly has a copyright law which is capable of being applied to the part of this case for which it is the applicable law, and there are copyright decisions in the Qatari courts, even if not all of them are reported.
51. Second, both experts agreed that proceedings in Qatar are conducted in Arabic and that all documents in evidence or being considered by the court must, if they are in another language, be translated by a licensed or official translator into Arabic. There was some dispute on the relative costs of such translation services, but while these points might have a bearing at stage 2, they do not bear on stage 1.
52. Third, in respect of the costs recovery in Qatari courts, Mr Al Ansari stated that:
- “...the [*Qatari*] court will award minimal attorney fees, with such fees determined solely by the Court without review of the actual incurred attorney fees. In practice, the costs award in respect of attorney fees is a nominal sum, equivalent to approximately £50-£150 depending on the case, which is paid into court funds rather than to the successful party. In reality the winning party will therefore only recover the amount of damages awarded by the judge and court fees, including expert fees. The winning party will not in practice be able to recover its actual attorney fees.”
53. In relation to costs, Mr Al-Abdulla responded:
- “While I do not disagree with Mr Al Ansari’s assertion...that Qatari courts award only minimal attorney fees, it is however not a fact that courts do not award costs generally. For example, the fees of court-appointed experts can be claimed and reimbursed.”
54. It is clear that the approach to costs recovery is less generous to a successful party than in England and Wales, but that has nothing to do with whether the Qatari forum is one with which the case has the most real and substantial connection. Moreover, I cannot leave this issue without noting that, as experience in IPEC has shown, costs recovery for intellectual property disputes is a more nuanced matter than a simple assumption that generosity to the winning party is always and necessarily a good thing.
55. Fourth, on the question of how the courts of Qatar would approach foreign law, Mr Al Ansari and Mr Al-Abdulla did not agree. The question was whether the court would hear expert evidence on foreign law or whether, as in some civil law legal systems, such evidence of law would not be admitted and the court would approach foreign legal materials directly. Their respective views were:

Mr Al Ansari:

“The matters on which experts may opine are limited to factual matters. Accordingly, experts cannot opine on points of law, such as the interpretation and applicability of foreign copyright law.”

Mr Al-Abdulla:

“...under Article 16 of Law No.16 of 2017..., courts are empowered to appoint experts from outside the pool of approved experts and do so. As a matter of fact, in some cases, Qatari courts have indeed applied foreign legislation. Finally, Article 334 of the Civil Procedure Law allows the parties to mutually select an expert of their choice. In my assessment, Qatari courts...should be at no greater disadvantage in deciding such disputes under foreign law as a foreign court might be in deciding disputes governed by a law other than of its jurisdiction.”

56. Fifth and finally, in respect of the application of foreign law in the Qatari courts, Mr Al Ansari and Mr Al-Abdulla did not agree about how the Qatari courts would approach foreign law derived from cases rather than statutes, stating respectively:

Mr Al Ansari:

“The Qatari court will apply a civil law approach even when considering principles of law that derive from common law jurisdictions. The judge will therefore request to see a statutory provision in support of any position put forward, even where the legal principle has a non-statutory basis. Whilst it is open to the Qatari courts to apply and interpret common law precedents, the courts are not required to do so.”

Mr Al-Abdulla:

“...I disagree with Mr Al Ansari’s view...In my opinion, Qatari courts will not require that a statutory provision be cited in support of arguments and claims based on non-statutory sources in particular judicial precedents. Rather, while applying common law, Qatari courts will be inclined to apply, and rule on the basis of, the relevant principles and binding precedents.”

57. Taking the fourth and fifth points together, despite the divergent views of the experts about how a Qatari court would go about dealing with foreign law, what was not established to my satisfaction was that the courts of Qatar were not capable of dealing with and applying foreign law appropriately in a case which required it.
58. I have set out these five points to show the nature of the dispute between the parties. In my judgment none of them have a bearing on whether the dispute has the most real connection with Qatar.
59. A different point, also advanced in relation to the applicable law, was the submission of PRS that the High Court has particular expertise in intellectual property cases and has experience of dealing with the relatively complicated law on the communication right. Counsel for QA retorted that it was by no means clear that the communication right as enacted in other countries outside the EU as a result of the relevant treaties, would or should necessarily be interpreted in the relatively complicated manner that is now undertaken in the EU, including the UK. This point was also put as a submission that Qatari copyright law was unlikely necessarily to be the same as UK law. I see the

force in the submission that the approach to the communication right in countries outside the EU may well not be the same as the approach under EU law. However that is not a point which weighs in favour of one or other party to this application, for the same reason many of the other points do not. Whichever court has to try this case will have to grapple with the laws of other states and grapple with these particular issues to the same extent.

Factors affecting convenience or expense such as the location of witnesses or documents

60. At present there is a dispute about how the Oryx One system or the Oryx One Play application operate. If that dispute remains in existence until trial then there will need to be some evidence from witnesses based in Qatar, and some documents produced which are in Qatar. I am sure the documents will be needed but as best I can tell at the moment, I am doubtful whether this dispute will still be live by the trial so as to require witnesses. It is not a complicated detailed issue about how the system works. It is a fairly simple question of when and how users can access the system. That is likely to be resolved before trial but if not it will be a minor aspect of the dispute.
61. Equally there may need to be some evidence from witnesses based in the UK if issues arise relating to the London based company (Global Eagle Entertainment) which provided the Repertoire Works to QA in the first place. However QA contends that there will be no need for that evidence, essentially because it will make admissions. I think that is likely too.
62. Assuming infringement is established, it follows that at some stage in this dispute – whether at a later damages enquiry or a combined trial of liability and quantum – both QA and PRS are likely to want to call evidence about contracts and licensing. On each side this will require evidence from the UK and Qatar respectively.
63. Overall on this topic, for whichever court hears the matter, there will be a need to translate into or out of English or Arabic.

Conclusion at stage 1

64. I have not addressed the so called *Cambridgeshire* factors because I have not found it necessary to do so.
65. Overall in my judgment the position is clear. In terms of the personal connections between the parties, the case has real connections to the UK and real connections to Qatar. In terms of the factual events and also the location of witnesses and documents, the best that can be said is again that there are connections to both places. Aside from the point on applicable law, which is addressed below, I do not agree that the connections to Qatar in that respect are significantly stronger than those to the UK.
66. This dispute is concerned with events which have taken place in a large number of countries and for which the applicable law of a large number of states is relevant. I doubt whether in the end it will prove necessary to examine every single one of those laws distinctly, but whichever court handles the case will be required to examine laws other than its own.

67. The debates about the Qatari legal system, its approach to copyright and to evidence of foreign law are not relevant at this stage.
68. So far, none of these factors supports a case that Qatar is clearly the natural forum for this dispute.
69. The final point is the following. A major part of QA's argument at stage 1 was that a factor strongly favouring Qatar as the natural forum was that Qatari law will apply to the vast majority of the acts complained of and many more than those to which UK law will apply. I accept that in terms of the amount of time, or the number of plays of a work, Qatari law will apply to many more of those instances than UK law, however that is not the whole story. The case is not a Qatari copyright dispute in which the events in and law of the UK and other countries are a kind of ancillary aspect. Every flight (save for domestic ones) engages the copyright laws of at least two states. The case is really a global copyright dispute between a UK holder of those global rights and a Qatari user of the protected content who is using it all over the world. The dispute has a connection to every state to and from which QA flies planes. Nevertheless the dispute does clearly have a more real connection with the UK and Qatar than it does with any other state. However as between the two, the fact that a higher share of any damages may be due for acts to which Qatari law is applicable than those for which UK law is applicable does not make Qatar clearly and distinctly the forum with which the dispute has the most real and substantial connection.
70. I reject QA's case on *forum non conveniens*. There is no need to consider stage 2. I will say that I was doubtful about the argument of PRS at stage 2. In other words, if I had found Qatar to be the natural forum for this dispute, I would have stayed the claim.

Stay on case management grounds

71. QA argued that even if its *forum non conveniens* submission failed, the court should stay all the non-UK copyright claims by applying the overriding objective. The submission was that those claims, at least the ones based on Qatari law, have their most real connection with Qatar and the court should in those circumstances be careful not to allow PRS by an English foothold, to bring what are manifestly non-UK claims against a Qatari-domiciled company in the English court.
72. I reject that submission. Following *Lucasfilm v Ainsworth*, claims for foreign copyright infringement are justiciable in the English courts. In this claim the defendant is within the jurisdiction of the court and, having got this far, the court has rejected the submission of *forum non conveniens*. It is in accordance with the overriding objective to manage this case in a proportionate manner. That will involve finding a suitable way to manage the aspects of the claim to which foreign law applies. No doubt expert evidence on Qatari law will be required, but how the other foreign laws will be managed is a matter to consider at a CMC. It may be that some representative jurisdictions will need to be chosen, but that is for another day.
73. There was also a suggestion that PRS's pleading of foreign law was deficient. That is no reason for a stay at this stage. The foreign law aspects will need to be managed and it may be that full pleadings of foreign law will be required only for representative jurisdictions, but as I said that is for another day.

74. I can see no reason on case management grounds to stay all those claims at this stage.

Conclusion

75. The application is dismissed.

Postscript

76. On Monday 13th July the parties received a copy of this judgment in draft – marked to be handed down on Friday 17th July. QA wrote to the court a letter dated 15th July asking that the judgment not be handed down until judgment was given by the Supreme Court in the pending case *Unwired Planet v Huawei* [UKSC 2018/0214].

77. This arose in the following circumstances. At the hearing there was some discussion about the extent to which the outcome of *Unwired Planet v Huawei* [UKSC 2018/0214] might have a bearing on this application. At one stage prior to the hearing QA had suggested that the application should only be heard after *Unwired Planet* was decided by the Supreme Court but then QA's position changed, and Mr Enser in his second witness statement said that the hearing of the present matter did not need to be delayed for that reason. On behalf of QA he reserved the right to rely on such a decision in any appeal from the order made on this application, if the decision came out later. Then, during the hearing Mr Saunders QC for QA raised *Unwired Planet* again. I indicated that once the parties received the draft judgment, if anyone wanted me to do anything other than handing it down, they could write to me. So that is what QA has done.

78. PRS replied in a letter dated 16th July 2020. In the letter PRS contends that the judgment should be handed down, points out the circumstances I have summarised above and argues that *Unwired Planet* is unlikely to have any bearing on the issues decided on this application.

79. I have decided that I will hand down this judgment as planned on Friday 17th July. My reason is that the application went ahead despite knowing that the Supreme Court had not given judgment. Until that judgment is given it is not possible to say whether it will have a bearing on the issues addressed on this application.