A LEGAL PROTECTION OF MUSIC ROYALTY ON OPEN CONTENT LICENSE THROUGH *SOUNDCLOUD*

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Abstract

Public ownership in digital world enable anyone to access and use the available content including SoundCloud. SoundCloud provides music sharing services under an open content license by providing a platform for the content availability. This paper tries to investigate the use of open content licenses on SoundCloud and explain the legal protection of music royalties on open content licenses through SoundCloud. Employing normative juridical research methods, this paper makes use of secondary data (literature study). The results of the research show that the open content license is a license form that refers to a civil agreement that provide copyright protection in the digital world and provides royalty protection by determining how a work will be disseminated whether for commercial or non-commercial purposes.

Keywords: *copyrights, music royalties, open content license*

Abstrak

Kepemilikan publik dalam dunia digital memberikan kebebasan kepada setiap pihak untuk dapat mengakses dan menggunakan konten yang tersedia, salah satunya adalah SoundCloud. SoundCloud menyediakan layanan berbagi file musik dengan memberikan wadah bagi ketersediaan konten yang ditempatkan dalam platform dengan adanya pemberian lisensi konten terbuka. Tulisan ini akan menganalisis penggunaan lisensi konten terbuka pada SoundCloud dan menganalisis perlindungan hukum atas royalti musik dalam lisensi konten terbuka melalui SoundCloud. Menggunakan metode penelitian yuridis normatif, tulisan ini menggunakan data sekunder (studi kepustakaan). Hasil penelitian menunjukan bahwa lisensi konten terbuka merupakan bentuk lisensi yang mengacu kepada perjanjian keperdataan yang dapat memberikan perlindungan karya cipta dalam dunia digital dan memberikan perlindungan royalti dengan menentukan bagaimana suatu ciptaan akan disebarluaskan dengan tujuan komersial atau non komersial.

Kata kunci: hak cipta, royalti musik, lisensi konten terbuka

Introduction

Lately, music has been rapidly developed indicated by the significant numbers of creative musicians, from indie musicians who work without any cooperation with a record label or management, up to major-label musicians under a music management. Song/music writers make their works created then anticipated to maintain its authenticity. They use media to keep their work known by society.

The development of technology starts changing society lifestyle such as marketing method and the way people listen to music[1] as Abernathy and Clark opinion cited by Kyuong Joo Lee.[2] Nowadays, music marketing and music consumption altered to be digital where the society no longer focus on physical album but digital album and streaming service with many platforms such as SoundCloud, Spotify and JOOX. As cited from CNN Indonesia, music streaming ser-

[1] Luis Aguiar, Et Al, "Digital Music Consumption on the Internet: Evidence from Click-stream Data", *Information Economics and Policy*, Vol. 34, March 2016, p. 27.

[2] Kyuong Joo Lee, "The Coevolution of IT Innovation and Copyright Institutions: The Devel-opment of the Mobile Music Business in Japan and Korea", The *Journal of Strategic Information Systems*, Vol. 21 No. 3, September 2012, p. 246.

vice development in 2017 increases 38% from total music consumption in 2016.[3]

The higher role of technology in society surely demands a high awareness and understanding on music as part of the intellectual property rights. Some experts define intellectual property rights as a rights of intellectual human ability and it is transformed into a real thing.

Music from Intellectual Property Rights (IPR) perspective is part of copyright based on Law Number 28 Year 2014 of Copyright (Law of Copyright) which is meant as the creator exclusive rights that automatically based on declarative principle after a music is made without reducing the restrictions based on the laws. It means music as part of copyrights is protected by rights which can monopolize or prohibit others to change, publish, or copy others' work without permission.

SoundCloud is an example product in digital, platform, or online distribution product which is found by Alexander Ljung and Eric Wahlforss functioning to upload musics made by the writer by placing the file in network address and distributing their music tracks.[4] The function absolutely brings a consequence for music writer either positively or negatively. In contrast, it eases the music writer to distribute their music or promotion media to be recognized by the society. Unfortunately, their copyright security is vulnerable from irresponsible parties.

To minimize the possibility of copyright violence, SoundCloud serves open content license service which helps music creator share their original audio content and protect the creator from any action committed in SoundCloud. SoundCloud uses share content system by open license named Creative Commons License, a set of licence that can be used to share content activity, either in digital or physical to be widely published.

The shifting ideas on the copyrighted work for public significance obviously is worth analyzing that the author formulated the following research questions: *first*, how is the use of open content license by SoundCloud based on Law Number 28 Year 2014 concerning Copyrights?; and *second*, how is the legal protection of music royalties on open content license through SoundCloud?

Research Method

This research applies juridical norm which synchronizes the law in legal protection of the norms or other legal regulations regarded to the regulation implementation of the law for real.[5] Normative law method puts law as a norm structure system (the principle and rule of laws and regulations, court decision, treaties and doctrine).[6] To answer the research questions, the descriptive data analysis is used; it means this research will contain the analysis and description about open content license regarding to musical royalty on SoundCloud platform as set forth in the law of Copyright.

Discussion

The Use of Open Content License through SoundCloud Based on Law Number 28 Year 2014 Concerning Copyrights

The established work in science, art and literature have created an exclusive rights for the creator. The general perspective of copyright is an exclusive rights, exploitation of a work is the authority of creators or holders of related rights. It means that copyrights provide authority to creators or copyrights holder to keep or exploit their rights.

The work exploitation activity is an effort to gain profit from a certain work.[7] Seen from business perspective, to optimize the result of

[3] CNN Indonesia, 2018, "*Layanan Streaming Salip Penjualan Musik Digital*", Available on https://www.cnnindonesia.com/teknologi/20170106183644-185-184639/layanan-streaming-salip-penjualan-musik-digital, diakses pada tanggal 11 April 2018

[4] Darren J. Reed, "Performance and interaction on Soundcloud: Social Remix and the Fundamental Techniques of Conversation", *Journal of Pragmatics*, Vol. 115, July 2017, p. 82.

[5] Burhan Ashofa, 2007, *Metode Penelitian Hukum*, Jakarta: Rineka Cipta, p. 15

[6] Mukti Fajar and Yulianto Achmad, 2009, *Dualisme Penelitian Normatif dan Empiris*, Yogyakarta: Pustaka Pelajar, p. 160

[7] Lydia Pallas Loren, "Untangling the Web of Music Copyrights", *Case Western Reserve Law Review*, Vol. 53, 2003, p. 673

the exclusive right needs an expansion of copyright ownership one of which is by license in its exploitation activity.

In this digital era, copyright has given broad space to determine copyright-related actions.[8] Especially in this globalization era, it is widely known that there is content distribution in digital form internet. It is perceived paradox in open content, where the creator economically consider the economic profit, but a new phenomenon says that it is not always about economic value.

Leonhard Dobusch and Jakob Kapeller explained that open content distribution is a new form of business strategy due to the positively wider work distribution for creativity or academic development.[9] The distributing content is then called as open content.

The purpose of open content license is to compensate the existence of economic motives to a creativity by continuing to liberate the creativity of a work without considering economic value of the work. The basic concept of open content license is releasing all economic rights from a work becoming a shared-ownership work.

Open content license principle is inspired from Free and Open Source Software (FOSS) coming from GNU-Linux and its license which is GNU General Public License (GPL) then it became the first free software license which allows user to use, learn, share, and change the software.[10] Different from Free and Open Source Software, the term of open content is not defined clearly. Open content License is also called as public license which is assumed as a standard license that allows the license recipient to share, create to the public and reproduce a work for non commercial purpose by any method and by any media freely.

The idea of open content comes from Lawrence Lessig, a Bachelor of Harvard Law School in Cambridge, US. In 2001, he joined Hal Abelson and Eric Eldred then built Creative Commons (CC) to promote the ownership of shared digital.[11] The aim of CC is to support and let the creator use their creations without relying on expensive and difficult law consultation or must relinquish their rights into the public domain. By doing so, CC has designed and published a wide range of different license types but easy to use by the license provider and can be understood easily by creator.[12]

SoundCloud is a platform which provides many services, especially in music distribution field in internet network system. SoundCloud users have a right to manage the uploaded content in the platform, communicate with fellow users and use the apps and other service freely but limited to SoundCloud terms of service.

Every content related to the content that has been uploaded to SoundCloud is entirely the responsibility of the uploader. They can control the use of the uploaded content in SoundCloud and SoundCloud will not claim any ownership rights in the content. It means SoundCloud functions as a mediator that hosts any content disseminated in public ownership through the internet network system.

From those conditions, SoundCloud provides license services for users in uploading content on the platform, the open content li-cense through creative commons licenses with several copyright approaches. This license has options to waive some of exclusive copyright but still maintaining the other rights. Here are some referral options for open content on SoundCloud: *first*, attribution is a license that allows everyone to compile, repair, and make derivative works, even for commercial purposes as long as

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8 Barbara L. Ludlow, "Understanding Copyright and Intellectual Property in the Digital Age: Guidelines for Teacher Educators and Their Students", *Teacher Education and Special Education*, Vol. 26 No. 2, 2003, p. 30

9 Leonhard Dobusch dan Jakob Kapeller, "Open Strategy Making with Crowds and Communities: Comparing Wikimedia and Creative Commons", *Long Range Planning*, Vol. 49 No. 5, September 2017, p. 200.

10 Georgia M. Kapitsaki, Et. Al, "Automating the License Compatibility Process in open Source Software with SPDX", *The Journal of Systems and Software*, Vol. 131, September 2017, p. 386.

11 Stephen Bazen, Et. Al," Musicians and the Creative Commons: A survey of artists on Jamendo", *Information Economics and Policy*, Vol. 32, September 2015, p. 67.

12 Giorgos Cheliotis, "From Open Source to Open Content: Organization, Licensing and Decision Processes in Open Cultural Production", *Decision Support Systems*, Vol. 47 No. 3, June 2009, p. 235.

they include credit to the Creation Owner on the original creation.[13] This result is in line with the Rights of Attribution, Section 43 (A) of The Lanham Act, and the Copyright Public.[14]

Regarding the Law Number 28 Year 2014, this license refers to Article 5 to Article 8 of Moral Rights. In Article 9 (3) of the Law of Copyright, every form of license aiming commercialization must get permit from the copyright holder, and this license is a form of permission granted by the copyright owner or related rights holder of the uploaded work by releasing the economic rights but still retains moral rights.

This license does not limit the access of wider community to the creation monopoly by the creator. This is related to the principle of the balance of rights and obligations of creator in which the Law guarantees the protection of rights of the creator but the creator is also obliged to give the widest possible access to community. Then, the creation can be used to educate the life of the nation, enrich cultural treasures and provide entertainment to the public without harming the reasonable interests of the creator. This means maintaining intellectual property rights must be kept and obeyed as an obligation to respect the Moral Rights of the creator.

Second, similar Share Attribution is a license that allows everyone to compile, repair, and make derivative works even for commercial purposes as long as they put credit to the Creation Owner and do license the derivative creation under similar terms. This license is almost the same as Attribution. The difference lies on the type of creation. In this license, the creation means derivative works under the original one which has been changed or adapted. This stipulations refer to the stipulation of Article 9 paragraph (1) letter d of the Law of Copyrights, namely the right to adapt, organize, or transform the Creation and Article 9 paragraph (2) which states that everyone who stand on the rights referred to article 9 paragraph (1) must obtain permis-sion from the creator.

In the stipulation of complete license, this is regulated in Section 1 point (a), namely "adaptation material is material that has Copyright and Related Rights taken from or made based on Licensed Material and Licensed Material must be translated, amended, re-arranged, realized, or modified in other ways with the license of the License giver for Copyright and Related Rights. For the purpose of this Public License, Licensed Material is a musical creation, performance, or sound recording. Adaptation Material is also created when the Licensed Material is combined with image transitions". By the same terms and condition, referring to the stipulations of open content license, and in line with the *"term of use"* of SoundCloud, as well as Article 9 paragraph (3) Law of Copyright, any kind of license intended to commercialization must get the permit of copyright holder.

Third, Non-Derivative Attribution which is a license that allows redistribution both for commercial and non-commercial purposes as long as the form of the creation is not modified and complete by giving credit to the Creation Owner. The creator allows others to copy, distribute, display, and perform only original works and not derivatives. Other parties are not allowed to modify without the creator's permission. This stipulation refers to Article 9 paragraph (1) letter *e* on the Distribution of Creations or copies by maintaining economic rights to create derivative creations.

Like other license restrictions, the "no derivative" element does not mean that the material cannot be adjusted or changed at all. This only means that the rights to change the creation is still held by the license holder, and anyone who wants to distribute the derivative works from licensed material must obtain an additional license. The purpose and objective of the limitation is to protect the work integrity.

Fourth, Non-Commercial Attribution which allows everyone to compile, repair, and create derivative creations not for commercial purposes, even though they must put credit to the

[13] Ahrash N. Bissell, "Permission Granted: Open Licensing for Educational Resources", *Open Learning,* Vol. 24 No. 1, February 2009, p. 101.

[14] Michael Laundau, "Copyrights, Moral Rights, and the End of the Right of Attribution Under US Trademark Law", *International Review of Law, Computers & Technology*, Vol. 19 No.1, 2005, p. 37.

Creation Owner and cannot obtain commercial benefits, the user does not have to do license the derivative works with the same con-ditions as the original creation.[15]

This license refers to the interests of economic rights on creation and/or economic rights on related rights as regulated in the law of copyright. Economic rights are closely related to the use of work aimed to commercial interests. Economic right determine who has power, freedom to use, sell, or give something that may allow essential actions for economic activity.

The conclusion of the description is that through this license, the copyright owner or related rights holder has the authority to limit the use of uploaded works on SoundCloud to be limited not to commercial interests, or in other words that the copyright owner or the relevant rights holder does not allow the use of his creation for commercial purposes in accordance with Article 9 paragraph (3) of the Law of Copyright.

Fifth, Non-Commercial Shared-Alike Attribution is a license that allows everyone to compile, repair, and make derivative works not for commercial purposes as long as the work users put credits to the owners and licenses the derivative with similar conditions to the original creation. This stipulation is the same as the provisions in Non-Commercial Attribution, only in this license, the copyright is in the form of derivative that must be licensed according to the original creation. Linked to the Law of Copyright, this license releases the right to adapt, arrange, and transform the creation, but does not include permits for commercialization purposes as stipulated in Article 9 paragraph (3).

Sixth, Non-Derivative Non-Commercial Attribution is the strictest license of all licenses which only allows others to download the creation of the Work Owner and share it to others as long as the users put credit to the work Owner yet the Users cannot change it in any way or use it for commercial purposes. This license strongly defends economic rights and moral rights to the content uploaded on SoundCloud.

Legal Protection of Music Royalty on Open Content License Through Soundcloud

Copyright protects copyright objects which in the form of science, art and literature. These are manifestations of human intellectual creativity. The branch of science, art, and literature is broad including music. Etymologically, song and music have different meanings. Song is a unity of music consisting of a series of sequential rhymes.

Provisions on protection of music are stipulated in the Article 40 paragraph (1) letter d of the Copyright Act. It writes that "What is meant by" song or music with or without text "is defined as a single piece of unified creative work. The purpose of "unified" here is a song or mu-sic's creation in terms of melody, lyrics, arrangements, and notation considered as unity rather than a stand-alone creation.

To exploit a song for economic benefits, it must be recorded, reproduced and disseminated to the public. The economic rights transferred in the exploitation of songs are economic rights which consist of several types such as reproductive rights, adaptation rights, distribution rights, performance rights, broadcasting rights, and others. Copyright Law states that economic rights can be transferred in accordance with the permission given by the Author or the Right of Related Rights through the agreement. This is included in Article 9 paragraph (2) and (3) of the Copyright Act.

On the SoundCloud platform, which is closely related to the internet, it certainly provides space for users to exchange works and enjoy the work of others freely. In SoundCloud, the creator's economic rights emphasize distribution rights of the SoundCloud service since it provides the right to use, copy, listen offline, repost, forward or distribute others, display publicly, adapt creations, create derivative works in compilation, display or other forms of communication of the kind to the public. This type of service in SoundCloud refers to the exploitation of Economic Rights regulated in Art-

[15] Singh Jnanendra Narayan, "Literature Review on Copyright Infringement and Protection", *Library Herald*, Vol. 52 No 2, 2014, p. 159

icle (9) of the Copyright Act, namely: the publication of works, duplication of creation in all its forms, translation of creation, adaptation, arrangement, or transformation of creation, performance of creation, announcement of creation, communication of creation; and rent of creations.

Rights in the terms of SoundCloud service can be granted according to the type of license chosen and set by the user. The users of the uploaded content can limit the rights available to the public by releasing some of the rights they have while retaining a portion of the other rights. These provisions are adjusted to the license agreement that the author has explained in the previous discussion.

The licensing provision clearly states that the type of license provided by SoundCloud is a limited, universal, non-exclusive, royalty-free, and fully paid license. The purpose of the limitation is that users can limit the use of the uploaded content on the platform. Universal means that the scope of this license is unlimited including access throughout the world. Non-exclusive means that users release some of their exclusive rights. Royalty-free means that the license does not impose royalties. Full payment means that the economic rights of the creator are protected in this license.

Both all rights reserved and some rights reserved approaches are accommodated by the Copyright Act. The protection of economic rights of the creators in SoundCloud is manifestted in "On SoundCloud" and "SoundCloud Go" Services that provide feedback or another form of counter-achievements namely profits derived from the amount of advertising and the number of plays in the uploaded content.

The more number of plays on the uploaded content, the more money user can get from SoundCloud. The moral rights approach considers that the more familiar the creator known by the public, the more popularity he received since he has achieved self-actualization and recognition of others, as well as economic benefits arising from it. In line with this in the combination of open content is a statement about moral rights which explains that public attention is a scarce source in the economic field that has become dominant in the digital era. In fact, public attention is an important economic factor.

It cannot be separated from the fact that music streaming platform is increasingly popular yet the potential piracy may decrease the sales value.[16] SoundCloud protects every use of content available on the platform with the "Reporting infringements" system. With the above conditions, SoundCloud allows the user to report any violations on the platform. Then SoundCloud also has the right to limit the use of content and remove any content that violates copyright provisions with an automatic detection system implemented on the platform. When the content has been uploaded to the platform, the system on the platform will automatically check the database from the content requested by the copyright owner to immediately block it.

The protection system in SoundCloud, stated on the Copyright Number Law, refers to a system of protection by the Government which is regulated in Article 54 through Article 56 which explains several things. *First,* a system of protection by the government is implemented by supervising the creation and dissemination of the Copyright content and Related Rights by carrying out cooperation and coordination with either national or international parties in preventing the creation and dissemination of the contents of Copyright infringement and Related Rights and supervision of recording actions using any media on the Work and Related Rights products at the venue.

Second, reporting on violations. Anyone who knows the violation of Copyright and/or Re-lated Rights through an electronic system for Commercial Use can report to the Minister. The report is then verified by the Minister and if sufficient evidence is found based on the results of the verification report, at the request of the reporter the Minister recommends to the minister who organizes government affairs in the field of telecommunications and information

[16] Luis Aguiar, "Let the Music Play? Free Streaming and Its Effects on Digital Music Consumption", *Information Economics and Policy*, Vol. 41, December 2017, p. 1

technology to carry out any necessary measures against infringing content.

Third, ministerial authority. The Minister who carries out government affairs in the field of telecommunications and informatics based on the recommendation of the minister and the reporter has the right to carry out actions in the form of: closing part of the content that violates the Copyright in an electronic system or making the electronic system service inaccessible; close all access to content that violates Copyright in an electronic system or make electronic system services inaccessible. Within a period of 14 (fourteen) days after the closing of all access to the content, the minister must request the determination of the court. The provisions in these articles explain that there is a form of proactive action by the Government in carrying out the means of copyright protection which is disseminated in the internet network in a systematically.

Conclusion

The use of open content licenses is based on the principle of "some rights reserved". Open Content License in SoundCloud refers to a form of civil agreement that uses the principle of freedom contract in accordance with Article 1338 of the Civil Code by providing an option to the creator or copyright holder to determine for themselves how a work will be published under the type of license in the Open Content License and also determine what rights will be released to the public including other rights that will be retained.

There are two types of licenses namely the open content licenses for the commercial and non-commercial purposes. With respect to licenses with commercial interests, based on Article 9 paragraph (3) of the Copyright Act, the real form of royalty protection on SoundCloud is a counter-achievement in another form, namely on SoundCloud Go and On SoundCloud services which provides feedback in terms of money for the uploaded content on the platform by considering the large number of advertisements and number of plays on content that has been available and spread on an internet network.

Suggestion

An ongoing review is required to the development of open content licenses in the community and the readiness of Indonesian copyright law can be aligned with open content licenses. The government should provide more pro-active actions regarding the development of copyright in the globalization era so that the creators understand the form of legal protection against copyright in the development of science and technology by issuing technical regulations as indicators of the implementation of royalty protection given to copyright through functions that can be provided by the Collective Management Agency.

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