

Marriott's Sony Music Settlement: Navigating Indemnification Claims in Franchise and Management Agreements

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Key Take: *Marriott's Sony settlement highlights the critical role of indemnification clauses in allocating liability between franchisors and hotel owners.*

Marriott International, one of the largest hospitality companies in the world, recently settled a dispute brought against it by Sony Music Entertainment alleging “rampant” and “willful” copyright infringement. While the terms of the settlement have not been made public, we understand that Marriott has been attempting to pass on the cost of this settlement to its hotel owners, assessing charges to its managed and franchised hotels. This article explores the background of the dispute, Marriott’s actions, and why owners may not have a contractual obligation to indemnify and/or reimburse Marriott for these costs.

The Sony Music Lawsuit

In May 2024, Sony Music Entertainment sued Marriott International in the United States District Court for the District of Delaware, alleging direct copyright infringement of Sony's music on Marriott's social media accounts and seeking a permanent injunction of Marriott's infringement activities. According to Sony, more than four years before commencing this lawsuit, Sony began notifying "Marriott that many of the Marriott Social Media Pages included videos using, without authorization, copyrighted sound recordings owned and/or controlled by Sony," allegedly identifying hundreds of such videos. Sony also alleged that it had identified videos promoting Marriott's brands and/or hotels by paid influencers. The infringing recordings included songs by Beyoncé, Michael Jackson, and others. Sony further alleged that the infringing videos "generally run the length of the Marriott Videos and Marriott Influencer Videos, and often include the catchiest or most familiar parts of those works."

Sony also alleged that Marriott's infringing use of its copyrights was knowing and willful. Specifically, Sony alleged that it "had repeatedly given Marriott notice of infringing posts," but that "Marriott has continued to post new infringing videos and has continued to make previously posted infringing videos (including videos Sony [] had specifically identified to Marriott) available long after learning of Sony['s] claims." Sony also pointed out that Marriott had also previously been sued for "precisely this issue: the unauthorized use of copyrighted content on social media" in a 2021 case filed in the United States District Court of the Southern District of California. Sony sought statutory damages of up to \$150,000 per infringed work, which could have totaled more than \$100 million.

Approximately six months after Sony commenced its lawsuit, in October 2024, the case was voluntarily dismissed with prejudice, following a settlement. The terms of the settlement have not been made public.

Marriott Passes the Settlement on to Owners

Following the settlement, we understand that Marriott informed hotel owners that it intends to recover the costs of its settlement with Sony by charging managed and franchise hotels. We understand that Marriott contends it is assessing these costs under the various indemnification and/or reimbursement provisions in its hotel management and franchise agreements.

This approach has alarmed certain owners, who face significant financial exposure for a liability that does not pertain to their hotel and, arguably, arises from Marriott's internal corporate decisions, such as social media marketing practices and compliance failures. Additionally, while the amounts assessed to each hotel owner are significant, the costs of refusing such payment and litigating the issue could be far in excess of the assessed amount, unless collective action is taken. As a result, owners may feel there is nothing they can do but pay the demand.

Indemnification Provisions in Hotel Agreements

As a general matter, it is typical for hotel management and franchise agreements to include an obligation requiring the owner to indemnify the hotel operator or franchisor against any claims, damages, or liabilities arising from the operation, management, or maintenance of the hotel. Often, there are exclusions to an owner's indemnification obligations; for example, the indemnification would not apply where the hotel operator and/or franchisor has acted with gross negligence or willful misconduct.

In lieu of or perhaps in addition to an indemnity, some hotel operators have also included general provisions requiring that the hotel owner cover all of a hotel operator's costs and expenses relating to the hotel that is the subject of the agreement, regardless of whether the hotel operator acted with gross negligence or willful misconduct. Some

management agreements also expressly include in the definition of “operating expenses” or “deductions” all costs incurred by the hotel operator with respect to the management of the hotel.

Courts generally enforce indemnification provisions based on the specific terms of the contractual language at issue. It is, therefore, important for owners to review the specific terms of their hotel management or franchise agreement, including language relating to indemnification and reimbursement of certain corporate expenses and costs.

Possible Defenses to a Reimbursement and/or Indemnification Demand

Depending on the specific language of the hotel agreement at issue, an owner may have a number of legal bases to push back on a hotel operator or franchisor’s demand for indemnification relating to a global, corporate settlement, such as the Sony settlement.

1. The Settlement Arises From Corporate Conduct

With respect to the Sony lawsuit, the allegations have little to do with an individual hotel. Rather, the allegations concern Marriott’s corporate social media practices and its allegedly knowing failure to obtain proper licenses for copyrighted music. This is corporate conduct that arguably does not arise out of Marriott’s management or franchise of any particular property. Accordingly, an owner may have a good argument, depending on the language of its specific agreement, that the settlement is outside the scope of the indemnification and/or reimbursement provisions.

2. The Settlement Is Based on Allegations of Willful Misconduct

Additionally, as noted above, indemnification provisions typically exclude conduct that is grossly negligent or willful. With respect to the Sony lawsuit, Sony expressly alleged that

Marriott's conduct was knowing and repeated. If true, an owner may have a good argument that such conduct was grossly negligent and, depending on the language of the specific agreement, not subject to indemnification.

3. The Settlement Is Not a Third-Party Claim With Respect to the Hotel

While hotel operators are agents of the owners, third-party claims usually arise because of the acts the hotel operator is taking at or relating to the owner's hotel on behalf of the owner. In the franchise context, franchisors typically seeks to be indemnified for any claims arising out of the operation or licensing of the hotel.

With respect to the Sony lawsuit, the allegations do not appear to relate to Marriott acting as an agent on behalf of any particular owner, or to the operation or licensing of any particular hotel. Instead, the claims appear to relate to Marriott's own actions on behalf of itself. Thus, a court may find that owners have no responsibility to reimburse Marriott in such circumstances. A careful review of each hotel management and/or franchise agreement will be required to assess an owner's rights in this circumstance.

4. Corporate Settlement Payments Are Not Shared Costs or Centralized Services

Many hotel management agreements also include provisions requiring owners to pay "centralized services," which are intended to be corporate costs that are shared among a group of hotels, such as corporate group sales operations. A settlement, however, is not typically viewed as either a service or good that is being offered to any particular hotel. Thus, a court may ultimately determine that Marriott would be precluded from categorizing any reimbursement demand as a centralized service.

Moreover, most hotel management agreements require hotel operators to assess such centralized services in an equitable manner, meaning that

each hotel included within the collective shared expense is allocated a portion of the costs based on some metric intended to be fair to owners. Thus, larger hotels often pay higher fees for centralized services than smaller hotels. With respect to the Sony lawsuit, If Marriott assesses its settlement costs in a manner that is not fair and equitable (for example, a flat fee for managed hotels and a flat fee for franchised hotels), this type of flat pass-through expense may not pass judicial scrutiny.

5. Owners Did Not Authorize the Settlement

Additionally, many hotel agreements require that an owner provide its written approval to settle any lawsuit in excess of an agreed dollar amount.

From news reports, it appears that the Sony settlement was for tens of millions of dollars.

Depending on the settlement approval language in the agreement, it is possible that owner's approval could be required for the settlement if the cost thereof is charged back to the hotel.

Furthermore, if a hotel operator refuses and/or is unable to disclose the terms of the settlement agreement to each of its owner, then no owner is actually on notice of the particulars of what is being demanded for reimbursement. As a matter of agency law, the hotel operator would be required to disclose such information, especially to the extent it is arguing the settlement was done on behalf of its principal, the owner. Furthermore, where a settlement is unauthorized by the owner, the owner may have a claim against the hotel operator for breach of contract.

Owners Should Review Their Specific Agreements and Seek Legal Counsel

As explained herein, the ability of a hotel operator's attempts to pass along the costs of its settlement depends on the exact language of each owner's hotel management and/or franchise agreement. In light of the nature of Sony's claims and the typical structure of indemnification and reimbursement provisions, owners may have strong grounds to dispute any

demand it receives from Marriott for reimbursement of the Sony settlement.

As a practical matter, owners facing Marriott's demand should consider the following:

- **Review Your Agreements Carefully:** Examine the indemnification, owner approval, and centralized service clauses in your hotel agreements to understand your obligations and any exceptions.
- **Assess the Nature of the Settlement:** Since the settlement arose from Sony's allegations that Marriott had willfully infringed upon its music copyrights, owners should question the applicability of indemnification and reimbursement provisions and ask questions about the nature of the settlement agreement and any continuing obligations therein.
- **Consult Experienced Hospitality Counsel:** Legal counsel can analyze your contracts and advise on the validity of Marriott's demands and potential defenses.
- **Document All Communications:** Keep detailed records of all correspondence and notices related to Marriott's payment demands.

Conclusion

While indemnification and reimbursement provisions typically require owners to cover certain liabilities relating to the operations of their hotels, these provisions generally exclude liabilities arising from the hotel operator's or franchisor's own gross negligence or willful misconduct. Since the Sony lawsuit directly alleged willful copyright infringement, owners confronted with charges relating to the Sony lawsuit may be able to avoid such charges. Owners should carefully review their hotel agreements and seek legal counsel to evaluate their interests.