

3 affirming the lower court’s prior decision. In these prior rulings, the court held and the First Circuit
4 affirmed that GVLI had failed to provide sufficient evidence demonstrating BPPR’s infringing
5 performance of the song Genesis and therefore was awarded no damages based on the alleged
6 infringing performance. See Venegas-Hernandez v. PEER, 2004 WL 3686337 (D.P.R. 2004),
7 affirmed in part by Venegas-Hernandez v. Asociacion de Compositores v. Editores de Musica
8 Latinoamericana, 424 F.3d 50 (1st Cir. 2005).

9 LAMCO asks this court to apply the preclusive effect of these rulings and dismiss GVLI’s
10 present action. However, the parties in the above-captioned case have stipulated to the fact that the
11 song Genesis was performed during the 1993 Banco Popular Christmas Special. (See Docket No.
12 518 at 4.) In the previous ruling, this court dismissed a similar infringement action based on the
13 granting of the retroactive license as there was insufficient evidence of actual performance of the
14 work Genesis. Here, such a fact is not in dispute. Therefore, because the controlling facts of the
15 case have changed, collateral estoppel does not apply to the issue of performance of the work
16 Genesis. See Walsh v. Intern. Longshoremen's Ass'n, AFL-CIO (1st Cir.1980) 630 F.2d 864, 874
17 (“collateral estoppel applies only where the “controlling facts” are unchanged). As such, the court
18 denies LAMCO’s motion to dismiss this claim based on a theory of collateral estoppel.¹

19 **II. Statute of Limitations**

20 LAMCO avers that the statute of limitations bar that precluded a similar infringement claim
21 against BPPR (See Docket No. 410) should also apply to this claim. However, the court finds this
22 defense inapplicable as the actions by LAMCO relating to BPPR’s infringing performances occurred
23 on November 6, 1998, when LAMCO allegedly infringed GVLI’s copyright by granting BPPR
24 retroactive performance rights of the song Genesis. As this counterclaim was filed on June 26, 2001,

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26 ¹ A similar argument was already brought before the court by BPPR attempting to dismiss
27 GVLI’s performance claim based on collateral estoppel grounds. (See Docket No. 270). In this
28 previous order, the court ruled that because the issue of performance was not actually litigated and
determined by a valid and final judgment the ruling in the case does not have a preclusive effect on
this claim.

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it falls within the three year statute of limitations proscribed by the US Copyright Statute for a claim of copyright infringement. See 17 U.S.C. § 507(b). Therefore, GVLI’s infringement claim, with respect to LAMCO’s actions is not time barred.

SO ORDERED.

In San Juan, Puerto Rico this 15th day of July, 2010.

s/ Gustavo A. Gelpi

GUSTAVO A. GELPI
United States District Judge