

Katy Perry Took a PR Hit From ‘Dark Horse’ Trial, but May Be Off the Hook Financially

By [JEM ASWAD](#) and [SHIRLEY HALPERIN](#)



CREDIT: COURTESY OF ABC

Media reports around the [Katy Perry “Dark Horse” case](#), in which a jury found this week that she and her producers and cowriters had [infringed](#) upon the copyright of Flame’s 2013 song “Joyful Noise,” often focus upon the damage the case might do to her career, her reputation or her bank accounts. But the crux of the case is really about the production.

While the damages in the case are yet to be determined, it’s quite possible that the financial impact on Perry will be minimal, if not next to nothing, assuming that her contract with the song’s cowriter and producer, [Dr. Luke](#) (Lukasz Gottwald) is in line with many current producer contracts — even though the jury determined that she and all of her cowriters and producers are liable for the infringement. Those deals often indemnify the artist from financial damages.

“If the producer brings in their own beats or music that the artist then adds lyrics or a melody to, typically the producer deals indemnify the artist for any breach of warrant, and the warranty would be that all the music is original,” says music attorney Ed McPherson, who specializes in copyright and has handled cases for Lady Gaga, Frank Ocean, Limp Bizkit, Fergie, Linkin Park, and others.

It is worth noting that [in her testimony last month](#), Perry said that co-writers [Dr. Luke](#) and Cirkut (Henry Walter) brought her the song’s instrumental track, which suggests the two could have included elements of “Joyful Noise” in the song without Perry’s knowledge.

Often, the arrangement includes legal fees, and is mutual. “In making that deal, the producer may say, ‘Okay, it’s the same for [the artist], if we get sued then you’ll have to pay my attorneys fees’” adds attorney William Hochberg, who also specializes in music copyright, “and that may be the case here.” (Both attorneys noted they are not familiar with Dr. Luke’s deal with [Katy Perry](#); attorneys for Perry and Dr. Luke either declined or did not immediately respond to *Variety*’s requests for comment.)

An insider notes that Perry often writes to a beat, as she did with the instrumental track for “Dark Horse,” which is what makes her partly culpable in the plaintiffs’ argued case. As such, she may have to give up a portion of the publishing, seeing as Perry has part of the master recording. Also related to the master, her label and parent company, Universal Music Group, may need to pay back some of its earnings on the song, as well as the entities representing Max Martin, like Kobalt, which administers his catalog.

This is not always the case, though. As McPherson notes: “The artist has indemnity obligations to the publisher and the record label, so in theory the producer would indemnify all those people, but sometimes it’s a fight. I’m not familiar with Dr. Luke’s deal in all this, but the jury came back that all of the people and companies involved are liable, and if he has an indemnity obligation, he would have to cover them.”

There are cases in which the artist could be on the hook for financial damages: If the producer cannot pay them, although that is unlikely to be the case for Dr. Luke, who is one of the most successful producers and songwriters of the past 20 years (although his career has been stymied by his ongoing legal battles with Kesha).

“I’ve been involved in situations where the producer brought in a sample that wasn’t declared or something like that, and the artist ended up having to pay for it,” McPherson says, “because your indemnity is only as good as the indemnitor. If the producer doesn’t have the money, then you’re stuck.”

It is also worth noting that although the case was handled by Dr. Luke’s litigator, Christine Lopera, McPherson points out, “Whatever the indemnity situation is, Perry was concerned enough to have her own litigator, Vince Chieffo, involved in the case, rather than completely relying on Luke’s attorney.”

It’s interesting, however, that Perry bore the brunt of the negative coverage of the trial, when the infraction was in essence Dr. Luke’s doing. “They always go after the artist,” says an industry insider, pointing to the “Blurred Lines” trial in which Pharrell Williams and Robin Thicke were the faces of the case.

Publishing royalties for this song have been on hold until the dispute is settled, and it’s likely they’ll continue to be should an appeal be filed or the damages awarded disputed. The plaintiffs, Flame (Marcus Gray) and Emmanuel Lambert Jr. may ask for as much as 50% of the song, which would mean a payout of \$20 million. The decision “sets a bad precedent,” says the source. “You could point to practically any song and say, ‘I feel like I’ve heard that before.’”



8

[LEAVE A REPLY](#)

[DR. LUKE](#)

[KATY PERRY](#)