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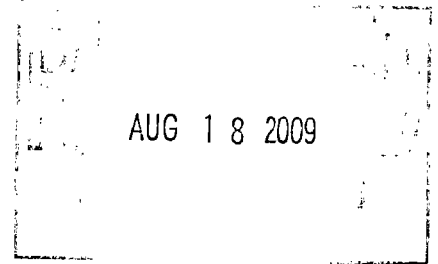
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August 14, 2009

Via Overnight U.S. Express Mail

U.S. Copyright Office
Copyright GC/I&R
P.O. Box 70400
Washington, DC 20024



Comment On: 37 CFR Part 202 [Docket No. RM 2009-3]
Mandatory Deposit of Published Electronic Works Available Only Online

To the Office of the General Counsel:

I represent creators of musical works and sound recordings. A relatively unheralded challenge in the online world of music is the revision of the historical record of the roles played by particular individuals in the creation of works. This can be seen, for example, in the battleground of constant editorial revisions in the Wikipedia profile of a particular band or the artist that is its primary creative force.

The most serious and costly expression of this issue is litigation over questions of whether a song or recording is a “joint work” and who are its “authors.”

A great deal of music, of course, takes the form of electronic works published in the United States which is initially available only online. Physical copies of a work may eventually be available (authorized and unauthorized), but there is no way to generalize about the timing of such availability.

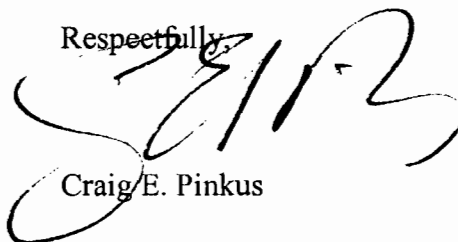
My concern about demand-based deposit of electronic musical works is that it may facilitate revision of creative history by applicants.

The mandatory deposit requirements offer some historical self-authentication in that a “best edition” tendered with a registration application at least existed as of the date of application. 17 U.S.C. § 101.

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In contrast, if a deposit demand issues from the Copyright Office after an application is submitted, authorship disputes anticipated or even underway at that point in time might encourage the registration applicant to respond with a best edition tailored to support his or her position in the dispute rather than with a copy of the historically correct best edition.

Respectfully,

A handwritten signature in black ink, appearing to read 'CEP', written over the word 'Respectfully,'.

Craig E. Pinkus

CEP:csl