Dear General Counsel Charlesworth:

I am a songwriter and performer of some note. I have been writing, recording and producing albums for over 30 years. I have also been active as a songwriter and artists' rights advocate. I have on more than one occasion submitted testimony to Congress on copyright and related issues and have testified before the House Subcommittee on Courts, Intellectual Property, and the Internet. Today I write to you as a songwriter.

Many songwriters first find out they are being compelled to participate in a digital music service when they get a paper claiming to be a statutory notice under Section 115 that is frequently late, backdated or otherwise noncompliant. This notice may come with a letter seeking to induce the songwriter to agree to statutory terms as well as other terms they may not know that they are not required to accept. Sometimes the notices are accompanied by a statement showing the songs have already been used by the service. I have in my file cabinets dozens of these seemingly non-compliant notices covering hundreds of my songs.

Now, if the songwriter is savvy enough to recognize that the notice is deficient the songwriter may challenge the notice as defective. I routinely hear from songwriters who have challenged defective notices that they receive no reply to their challenge and that the services concerned continue to use their works and may eventually even send royalty statements to the songwriter!

In order to get the service's attention, a songwriter would likely have to hire a lawyer. And if the notice is from one of the services operated by Amazon, Apple or Google the songwriter must find a lawyer willing to go up against one (or more) of the largest corporations in the

world. Even if statutory damages and attorneys' fees might eventually be available to a songwriter if victorious, it's unlikely that expensive federal copyright litigation is the most likely outcome to incorrect notices or deadbeat services.

And what is the most likely outcome? The service uses the songs in violation of the statutory requirement. They may even send payment! I have files full of checks for pennies or (rarely) a couple dollars. I don't deposit these checks because they often come with documents that seem to suggest that I'm agreeing to terms that I don't understand. Who would consult a lawyer for a $0.11 check?

A similar process happens with some services or record companies when they send an "opt in" for electronic notification of compulsory licenses. I'm not an attorney, but these click through agreements seem to contain language that has little to do with electronic notification! I wonder how many songwriters blindly cash these checks or agree to mysterious and confounding terms that accompany an electronic notification opt in?

All this is what I call "licensing by attrition." And it happens to independent songwriters on an ongoing basis because the compulsory licensee can continue to operate whether or not it has complied with the Copyright Act in the past.

I have seen instances where a supposed compulsory licensee has failed to comply with its payment obligations for years, ignored termination notices, and yet is still able to continue to receive the benefits of *new* statutory licenses for songwriters who await the same fate.

Nothing in the Section 115 license scheme requires any consideration of the creditworthiness or trustworthiness of the compulsory licensee. The songwriter has essentially been compelled by the

government to grant a license with absolutely no care given or concern shown by the government as to whether the compulsory licensee is unreliable. The entire burden of determining whether the licensee complies with even the most basic terms is entirely shifted to the songwriter—often after the fact.

Now in theory songwriters can attempt to terminate under Section 115, but this seems to require that the songwriter acknowledge that there was a valid license in the first place. Plus it assumes that the compulsory licensee will pay any attention to a termination letter from a songwriter.

Given the fact some services habitually fail to comply with the statute particularly when they "carpet bomb" notices of intention to use songs, it seems unlikely they live in fear of some individual songwriter. Without a court order I suspect none of these supposed compulsory licensees would comply. And I suspect, given the small amounts often involved, these compulsory licensees realize it isn't worth it to the songwriter to bear the expense of going to court even with the promise of an eventual reward of statutory damages and attorneys' fees for those who have jumped through the registration hoops.

But even if a songwriter can find a way to sue the deadbeat, why on earth should the government compel songwriters to submit to new licenses for a licensee with a history of nonpayment?

Would it not be both prudent and efficient to empower songwriters to request the Copyright Office deny habitual offenders the ability to rely on new compulsory licenses? Shouldn't songwriters have some recourse short of a lawsuit to stop the corrupt compulsory licensee from abusing the government's awesome power to force songwriters to license to all comers, even the deadbeats?

What I am suggesting is that songwriters have the ability to report

noncompliant compulsory licensees to the Copyright Office and that after a suitable investigation, the Copyright Office have the ability to publish a notice that certain parties lose the right to use the compulsory license under Section 115.

In an arm's length direct license, I certainly would not choose to make a new license for my songs with someone who didn't respect my rights or honor the terms of my agreement in the past—particularly someone who owed me money. Why should a compulsory license be any different?

Sincerely

David Lowery

Cracker/Camper Van Beethoven