

Dear Sirs

This is a comment in regard to obstacles I personally have encountered in the efforts to resolve a minor licensing problem of a well known song and input on resolving similar conflicts.

In December of 1976 I allege the note for note use of a song of mine called "Basement Blues" in a popular musical composition. At the time I had no knowledge of how my work was published and how it had come into the hands of the artists, or of Section 115 Compulsory License. When the disputed album was released it was noted on the inner cover that the song had a "copyright in dispute". I tried contacting the studio where my demo was recorded, but it had disappeared. It took many years to find the owner of the studio who told me that shortly after the recording was made, the studio was burglarized and the tape machine with our demo in it was pawned, with other contents of the studio, in the Palm Springs area in the winter of 1975, where some of the stolen studio gear was recovered. I suspected that there was a Section 115 license in use so I contacted the Copyright Office and was referred to the Licensing Division that informed me that a Section 115 Compulsory license was used on the song in question and that the underlying music was an Orphan Work. When I became aware of this fact in 2000, I applied for Copyright . The publishers were sent a notice that this was a licensing issue that should be looked into. One of the publishers wouldn't accept the notice and had it returned, to which he was personally contacted; his comment being "I admit to nothing". The second publisher responded that, even if it were infringement, there were statutes of limitations and they wouldn't even look at my claim. Because of the use of the Compulsory License it was never an infringement, but, because of the statutes of limitations on infringement, it would be hard to litigate. In addition, proceeding with this as an infringement would be prohibitively expensive and it would only be possible to recover licensing from the date of copyright registration and zero legal fees under the terms of a Section 115 License.

At that point in time I addressed the Copyright Office:

http://www.copyright.gov/docs/section/comments-3/reply/RM_2000-7_Reply_SJ_Michelsen.pdf

Within the following several months of that comment, I was allegedly contacted by representatives of both publishers. The first contact was where I do volunteer work in a very small town, where a hooded stranger, came up from behind me and repeated every word I said to the first publisher with what appeared to be a firearm stuck to my back. His hood and dark glasses hid his face, and his identity was unknown to anyone present. I pretended not to be the party he was looking for and he swiftly departed. Several weeks later, two photographers that claimed to be working "surveillance" for and paid very well by Southern California publishing interests, drove 400 miles and spent 3 hours photographing everyone at the venue in a very disruptive manor. Several weeks later I was confronted by a unknown man who said he had been hired to drive 8 hours just to talk to me. He said that I "walked the finest line he had ever seen a man walk" in his life. He had intimate knowledge of my life, including everything about

my work and home. He had purchased a local T shirt to "prove" to his associates that he had "been here to talk" to me. He got very personal with his threats that included friends, family and the establishment where I was working. He made me understand, in his remarks, that there was no question why he had come to our small town to intimidate me. Although I recognise that such actions could have been initiated by anyone, the discourses offered were too specific in nature, precise in detail, costly to undertake and well directed at me personally, to dismiss. Intimidation can be a hinderance to resoluution of minor licensing issues.

Discussion

The first issue that needs to be addressed is that if a publisher is using a Section 115 Compulsory License with an unknown composer there should be a data base with this information online as exists at the Canadian Copyright Office. It is completely unreasonable to expect a publisher to inspect all copyright records looking for owners of Orphan Works. As with drivers licenses, implied consent should prevail, and, when a composer does come forward, it should be expected that a notice should be given to publishers and that they should look into said claims. If this is not done, the original composer should be able to petition the Copyright Office for the revocation of the License. In addition, Section 115 users that fail to address the license should be afforded the same penalties as other serious infringers, including legal fees, licensing from day one and serious criminal penalties.

Practical application

If a creator suspects that their intellectual property is being used under a Compulsory License, the Copyright Office Orphan Works Database could be searched. If a match is found, the publisher could be sent a letter that a suspected use is happening. Included would be a copy of the underlying music for comparison. The publisher would have 30 days to address the challenge. If an Orphan Work had resolution, it would be easy for the publisher to perfect the license without legal actions and the repercussions thereof. If the publisher refuted the claim, included in the publishers reply should be how the suspected intellectual property was found and a copy thereof. The use of infringement statutes of limitations as an excuse for non-fulfillment of the license would be prohibited because the use of the Section 115 license means no infringement has happened. If a publisher fails to respond or refuses to look into the claim, the creator could petition the Copyright Office for the revocation of the Section 115 license. The Copyright Office would then send notice to the users, that they would have 30 days to address the challenge or the license would be revoked. If the publisher still fails to perform, the license would become void and the publishers would be fully liable. Without the benefits of the license, the creator could be able to successfully litigate as an infringement and recover legal fees and licensing from date of original use.

Intimidation

The second issue is that of the intentional intimidation I allege. Without a proper framework to

work within the copyright laws, an atmosphere of lawlessness is created. It is completely unacceptable that, in making a comment in such matters, harassment and personal threats of bodily injury should be made. Section 115 users that fail to address the license by the use of intimidation deserve serious civil and criminal penalties. Providing the measures described above would bring transparency to the license and would help to address outrageous behavior and provide documentation to relieve conflicts.

The benefits of creating a workable Section 115 license would be far reaching and most useful for producing artists, composers, DJs and music lovers in a climate of evolving musical interests.

Sincerely

SJ Michelsen