

BEFORE THE COPYRIGHT OFFICE
LIBRARY OF CONGRESS

In the Matter of)	
)	
Remedies for Small Copyright Claims)	Docket No. 2011-10
)	

COMMENTS OF GEAR PUBLISHING COMPANY

By Federal Register notice dated August 23, 2012, Vol. 77 No. 164, the Copyright Office solicited additional comments on the topic of adjudicating small copyright claims. Gear Publishing Company hereby submits its comments below.

ABOUT GEAR

Gear Publishing Company ("Gear") is a privately held company established in 1965. Gear has been recording artist Bob Seger's exclusive publisher since 1966.

COMMENTS

Copyright owners have been taking it in the shorts during the entire digital revolution. Uses of copyrighted materials have increased exponentially while royalty rates and license fees for new digital uses/services are painfully insufficient to replace the tremendous losses copyright owners have sustained during this shift from physical to digital markets (e.g. \$14.6 billion U.S. music market in 1999 down to \$7 billion 2011; RIAA). Clearly, the fines and penalties related to copyright infringement are not a deterrent. The safe harbors have resulted in an "infringe first, defend later" mentality and removed the incentive for those protected by safe harbor to take steps to reduce infringements or take responsibility for their level of participation in the infringements. If we create a small claims court system it will encourage even more infringements as the vast majority of cheaters are likely to view themselves as small scale infringers and there will be even less concern over penalties for illicit behavior. If infringers are not concerned about current penalties, they certainly will not be concerned about the potential costs related to a small claims system.

No one disputes that the number of infringements and unauthorized uses has skyrocketed in the digital market. For the infringers, the conditions are ideal: instant access to worldwide mainstream distribution, no outlays of resources for manufacturing or physical

distribution, fast payments for illicit sales and uses, no returns, and the ability to conduct their illicit business from any location with a laptop under a veil of virtual anonymity.

Other parties submitting comments have raised many legitimate concerns regarding the formation of a small claims copyright infringement system. It does not appear a consensus is close. There are so many potential upsides and downsides, advantages and disadvantages, winners and losers, that we think it would be best to refocus the effort away from creating a new small claims bureaucracy and apply those resources and energy towards finding ways to reduce the number of infringements in the first place.

Here are steps we recommend to reduce copyright infringements:

1. Increase the incredibly outdated statutory damages limit from \$150,000 to \$650,000 (roughly inflation adjusted from 1976 Act).
2. Encourage services that provide consumers or licensees web portals to upload or post copyright material in their sole discretion, to also provide copyright owners corresponding access within those portals to remove infringing content. If users can post content in a free market internet system then owners (including sound recording owners, musical work owners, photographers, publications, writers, etc.) should be able to remove infringing content just as easily. From the copyright owner's perspective this will reduce both the need to file claims and the potential damages by reducing the duration and extent of infringing use. Reward websites/digital service entities that provide copyright owners access to take down such infringing material by reducing statutory damage limits for such websites/services from \$650,000 to \$250,000.
3. Remove safe harbor provisions from existing copyright law and regulations.
4. Elimination of compulsory license privileges for life for any individual or company (and if a company, both the company itself and its individual owners and officers) found guilty of copyright infringement (non-appealable, final judgment).

Respectfully Submitted,

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