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Submitted Electronically

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Tanya M. Sandros
Deputy General Counsel
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

Re: In the Matter of the Mechanical and Digital Phonorecord Delivery Compulsory License, Proposed Regulations for Reporting Monthly and Annual Statements of Account for the making and distribution of phonorecords, Docket No. 2012-7

Dear Ms. Sandros:

I am David Lowery and I founded the bands Cracker and Camper Van Beethoven. I am also an instructor in the Music Business Program at the University of Georgia at Athens. I am writing to you regarding the proposed regulations for statutory licenses for mechanical royalties. These views are my own and should not be attributed to anyone else.

Other comments will address each of the proposed regulations, but I wanted to give you some general thoughts based on my experiences as a songwriter and music publisher. I want to emphasize that I am all for making music licensing easier, but am concerned that the Copyright Office get a clear picture of what it's like for songwriters, especially independent songwriters, to live with the laws you make.

1. No Audit: As a songwriter, I have no idea whether I am being paid correctly by any digital service and I am not allowed to audit them. As far as I know, no digital service complies with the rules anyway, so it almost doesn't matter whether the Copyright Office keeps them the same or changes the rules. This is untenable. When I gave a mechanical license to my record company, I could always audit the label's mechanical royalty accountings if I chose to do so. Let's be clear—the new boss is way worse than the old boss. If statements from digital services could be at least as bad as record company accountings, it would be a major step forward.

Respectfully, I would suggest that the Copyright Office should be working especially hard to provide songwriters with a good analog for a royalty audit.

2. Bait and Switch: I routinely receive a "notice of intention to use" my work that is always late. This violates the basic rule of statutory licensing. The "NOI" I receive often comes with a letter

asking me to log into a website to see if I am owed money by the digital service or how much I am owed. When I go to the website I am asked to “sign” a click through agreement that makes significant changes to the few statutory rights I have. This is the worst kind of trickery and is worse than the worst direct mail campaigns because I can always throw away the junk mail. *This trickery involves my life’s work and I’d rather not throw it away.*

I respectfully suggest that the Copyright Office should expressly prohibit anyone who uses the statutory license from further burdening songwriters by trying to trick them into a click through agreement that makes them give up the rights the songwriter is entitled to under the Copyright Act.

3. Minimum Amount for Payment: Digital services sometimes issue a check for one penny along with the bait and switch trick license—yes, \$0.01. I have no idea why they send a penny check, but I assume it has something to do with proving they paid for the rights they get in their click agreement. I also understand from songwriter friends that it is pretty common to get penny checks. So if these services can send a *penny* check when it benefits them, then why do I have to wait to earn \$50 before I get paid? And what about the bait and switch technique is supposed to give me confidence that these services will ever pay my \$50 and how would I ever know what my earnings were if I can’t audit?

I would respectfully point out to the Copyright Office that these services chose to get into the music business and they have known for over a decade what their obligations are. They save a bunch of money by using the statutory license instead of direct licensing, and I do not understand why they cannot simply pay what they owe when they owe it like everyone else is supposed to do.

4. Black Box: If I am lucky enough to get a certified statement from a CPA, I have no way of knowing if the CPA ever looked at my earnings or if there are any “black box” earnings that I’m entitled to. Given that I get no certifications and no audits, there’s no telling how much money should have been paid that wasn’t.

I respectfully suggest that the Copyright Office work with CPA associations to find clear guidelines for CPAs to follow that make the services pay out 100% of the money owed to songwriters or give it to the State unclaimed property agencies like an unclaimed utility deposit.

5. Don’t Protect Scofflaws: I am not convinced that these services have gotten all these mistakes done without a plan. Some may be innocent mistakes, but some seem very calculated. Respectfully, the Copyright Office should not allow services who have never

complied with the law to get protection of the laws they have evaded.

Thank you for this opportunity to hear from me and other songwriters on this important issue.

Sincerely,

David C. Lowery