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13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 DAVID LOWERY, VICTOR
18 KRUMMENACHER, GREG LISHER,
and DAVID FARAGHER, individually
19 and on behalf of themselves and all
20 others similarly situated,
21
22 Plaintiffs,
v.
23 RHAPSODY INTERNATIONAL,
24 INC., a Delaware corporation,
25
26 Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

DEMAND FOR JURY TRIAL

27 Plaintiffs David Lowery, Victor Krummenacher, Greg Lisher, and David
28 Faragher (collectively "Plaintiffs"), individually and on behalf of themselves and all

1 those similarly situated (each, a “Class Member” and, collectively, the “Class”)
2 allege as follows:

3 **NATURE OF THE ACTION**

4 1. This is a class action brought by Plaintiffs, on behalf of themselves and
5 the numerous other similarly-situated holders of mechanical rights in copyrighted
6 musical works that Defendant Rhapsody International, Inc. (“Rhapsody” or
7 “Defendant”) has used without mechanical licenses in an egregious, continuous and
8 ongoing campaign of deliberate copyright infringement.

9 2. Specifically, Rhapsody has — and continues to — unlawfully reproduce
10 and/or distribute copyrighted musical compositions (the “Works”) to millions of
11 users via its interactive commercial music streaming service, as well as its offline
12 listening service. Rhapsody reproduces and/or distributes the Works despite its
13 failure to identify and/or locate the owners of those compositions for payment or to
14 provide them with notice of Rhapsody’s intent to reproduce and/or distribute the
15 Works.

16 3. Rhapsody’s infringement of Plaintiffs’ and the Class Members’
17 mechanical rights is knowing and willful. Such use of the Works creates substantial
18 harm and injury to the copyright holders, and diminishes the integrity of the Works.
19 Rhapsody’s knowing and willful infringement is unlawful and without justification,
20 as Rhapsody has continuously failed to use any one of the many available
21 mechanisms to properly obtain authorization for the reproduction and/or distribution
22 of the Works, whether in the form of a voluntary or compulsory license, and whether
23 or not the rightsholder is readily identifiable. Touted as one of the earliest U.S.-based
24 subscription streaming services, Rhapsody has a significant and impactful presence in
25 the music industry, and the available resources to properly obtain all requisite
26 licenses. Rhapsody’s current illegal practices and procedures in connection with its
27 unlicensed reproduction and/or distribution of the copyrighted Works, combined with
28

1 its failure to pay owed mechanical royalties, evidences its practice of unfairly
2 profiting off the backs of composers.

3 **JURISDICTION AND VENUE**

4 4. This action is a civil action over which this court has original
5 jurisdiction under 28 U.S.C. §§ 1331 and 1338 in that the claims herein arise under
6 federal copyright law (17 U.S.C. § 101, *et seq.*) (the “Copyright Act”). Jurisdiction
7 also exists pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy
8 exceeds the sum or value of \$5,000,000 (exclusive of interest and costs), is a class
9 action in which a member of the proposed class, including Plaintiffs, is a citizen of a
10 state different from Defendant Rhapsody, and the number of members of the
11 proposed class exceeds 100.

12 5. Venue in this District is proper under 28 U.S.C. § 1391(b) and/or 28
13 U.S.C. § 1400(a). On information and belief, a substantial part of the acts of
14 infringement complained of herein occurs or has occurred in this District, and
15 Defendant is subject to personal jurisdiction in this District.

16 **THE PARTIES**

17 6. Plaintiffs and the Class are individuals and entities residing in the United
18 States and each of whom, during the Class Period (as defined herein), own the
19 reproduction and distribution rights of copyrighted musical works reproduced and
20 distributed by Defendant Rhapsody.

21 7. Plaintiff David Lowery is an individual who is a resident of Georgia.
22 Mr. Lowery has been a fixture of the music industry for decades, and like the
23 members of the class, has made his livelihood creating and performing music. Mr.
24 Lowery is a prolific songwriter and producer, and is the author or co-author of more
25 than 150 songs for his popular groups Cracker and Camper Van Beethoven. Both
26 Cracker and Camper Van Beethoven were formed in California. Mr. Lowery
27 recorded many of his musical compositions, which are at issue in this lawsuit, in
28 California. Mr. Lowery also tours and maintains his booking agency California.

1 8. Plaintiff Victor Krummenacher is an individual who is a resident of
2 California, residing in the City and County of San Francisco. Mr. Krummenacher co-
3 founded the band Camper Van Beethoven. Like Mr. Lowery, Mr. Krummenacher is
4 a prolific songwriter, and is the author or co-author of numerous musical works,
5 including many recorded by Camper Van Beethoven. In addition to authoring and/or
6 co-authoring musical works for Camper Van Beethoven, Mr. Krummenacher has also
7 released multiple solo albums containing numerous sound recordings that embody his
8 musical works.

9 9. Plaintiff Greg Lisher is an individual who is a resident of California,
10 residing in the City and County of Santa Cruz. Mr. Lisher is a renowned musician
11 and a member of the band Camper Van Beethoven, and is an author or co-author of
12 numerous musical works, including many recorded by Camper Van Beethoven. In
13 addition to authoring and/or co-authoring musical works for Camper Van Beethoven,
14 Mr. Lisher has also released multiple solo albums containing numerous sound
15 recordings that embody his musical works.

16 10. Plaintiff David Faragher is an individual who is a resident of California,
17 residing in the City and County of Los Angeles. Mr. Faragher co-founded the band
18 Cracker, and has authored or co-authored numerous musical works recorded by that
19 band. In addition, Mr. Faragher is a renowned musician who has collaborated with
20 numerous other well-known artists.

21 11. Defendant Rhapsody is a Delaware corporation with its principal place
22 of business at 701 5th Avenue, Suite 3100, Seattle, Washington 98104. Rhapsody is
23 duly qualified to do and is doing business in California. It has a California agent for
24 service of process. It operates an office in San Francisco, California. On information
25 and belief, Rhapsody pays California taxes, and owns and/or leases real property in
26 California for its San Francisco office. Moreover, the data relevant to Rhapsody's
27 infringing activities is primarily electronic and can be made available with ease in
28 California.

1 16. Plaintiffs and the Class have invested and continue to invest substantial
2 money, energy, time, effort and creative talent to create and develop the Works.

3 17. Rhapsody is an interactive commercial music streaming service (among
4 other services) that operates an Internet website (www.rhapsody.com) permitting
5 users to customize listening choices for recorded music and to create Internet “radio
6 stations.” Its Internet services are downloadable to computers and handheld devices
7 (via mobile applications) making its streaming capabilities widely available to
8 millions of users. Indeed, Rhapsody boasts that users can “[s]tream millions of songs
9 or download unlimited playlists and songs straight to your phone or tablet and never
10 miss a beat.” (See, Rhapsody’s Apps and Devices page on its website
11 www.rhapsody.com, attached hereto as Exhibit B).

12 18. Rhapsody offers its services to the public via different subscription-
13 based packages: (1) its “unRadio” platform (an internet radio service launched in or
14 around June 2014); and (2) its “Premier” platform. Both subscription platforms are
15 offered to prospective subscribers on a limited “free trial” basis.

16 19. The “unRadio” subscription (costing \$4.99 per month) permits users to:

- 17 • Access a “Personalized radio based on your favorite artist or track”;
- 18 • “Skip as many songs you want”;
- 19 • Enjoy “High quality, ad-free audio on mobile and on your computer”;
- 20 and
- 21 • “Download any song to listen offline – up to 25 songs.” (See
22 www.rhapsody.com.)

23 20. The Premier tier (costing \$9.99 per month) offers subscribers the same
24 unRadio features, plus the following benefits:

- 25 • “Download any song to listen offline – unlimited”;
- 26 • “Unlimited, on-demand access to millions of songs”;
- 27 • “Listen on home audio devices”;
- 28 • A “DJ with Rhapsody” feature for kids; and

- 1 • “Family plans” (which allow up to 5 separate accounts on a single
2 family plan to permit simultaneous use of the Premier platform of
3 Rhapsody). (See www.rhapsody.com.)

4 21. Rhapsody’s website currently boasts that its “leading streaming music
5 services” give members “ad-free access to more than 32 million songs.” (See
6 www.rhapsody.com.) As of December 2011, Rhapsody claimed that it had surpassed
7 1 million subscribers. As of July 2014, Rhapsody boasted 2 million paying
8 subscribers for its streaming services. (See, Rhapsody’s July 29, 2014 press release
9 from its website www.rhapsody.com, attached hereto as Exhibit C). As of July 2015,
10 Rhapsody claimed to have surpassed 3 million worldwide subscribers. (See,
11 Rhapsody’s July 22, 2015 press release from its website www.rhapsody.com,
12 attached hereto as Exhibit D). Consequently, Rhapsody earns millions of dollars in
13 revenues for its services, including from residents of California.

14 22. Rhapsody’s Internet music service is intended to and does promote
15 Rhapsody’s services in a manner designed to attract free-trial users and paid
16 subscribers of its services.

17 23. Rhapsody regularly reproduces and/or distributes to listeners and users
18 of its services Plaintiffs’ and Class Members’ musical compositions, and has done so
19 repeatedly for at least the past three years. In the course of rendering services to its
20 subscribers, Rhapsody reproduces and/or distributes Plaintiffs’ and Class Members’
21 musical compositions numerous times.

22 24. Rhapsody has not licensed Plaintiffs’ and the Class Members’ musical
23 compositions as required to reproduce or distribute the Works to its users and
24 subscribers.

25 25. On information and belief, a significant number of Californians would
26 have paid to listen to and enjoy Plaintiffs’ and Class Members’ musical compositions
27 through mechanisms other than Rhapsody (e.g., through the purchase of digital
28 downloads) if the Works had not been reproduced and/or distributed by Rhapsody,

1 and Rhapsody's willful infringement has thus diminished the California-based value
2 of these Works. Further, it was foreseeable to Rhapsody that its willful infringement
3 would diminish the California-based value of the infringed Works.

4 26. An interactive service such as Rhapsody, interested in reproducing
5 and/or distributing musical compositions embodied in phonorecords, can obtain
6 either a voluntary license, secured by negotiating with individual copyright owners,
7 or a compulsory license, as outlined under 17 U.S.C. § 115. A compulsory license is
8 not granted automatically under the Copyright Act. In order to obtain a compulsory
9 license, Rhapsody is required to send a notice of its intent to use musical
10 compositions to each copyright owner "before or within thirty days after making, and
11 before distributing any phonorecords of the work." *See* 17 U.S.C. § 115(b)(1). This
12 notice of intention to obtain a compulsory license – commonly referred to as a "NOI"
13 – serves the vital function of alerting copyright owners to the use of their musical
14 compositions and, in turn, the right to compensation for that use. The failure to
15 timely file or serve a NOI "forecloses the possibility of a compulsory license and, in
16 the absence of a negotiated license, renders the making and distribution of
17 phonorecords actionable as acts of infringement." 17 U.S.C. §115(b)(2).

18 27. Rhapsody has not obtained voluntary or compulsory licenses for the
19 reproduction and/or distribution of the musical compositions at issue in this litigation.
20 While Rhapsody has reaped the financial rewards of repeatedly violating the
21 Copyright Act, musical composition rightsholders are left emptyhanded. This failure
22 can only lead to one conclusion: that Rhapsody values the expediency and financial
23 benefits of wholesale copyright infringement over the cost associated with obtaining
24 the appropriate license.

25 28. Rhapsody's unlawful reproduction and/or distribution of Plaintiffs' and
26 Class Members' copyrighted works has substantially harmed and continues to harm
27 Plaintiffs and the Class Members.
28

1 29. Plaintiffs can identify all of the copyrighted musical compositions for
2 which they own the mechanical rights, and which Rhapsody has illegally reproduced
3 and/or distributed for its users. A brief, non-exhaustive and illustrative list of
4 Plaintiffs' infringed Works include, but is not limited to, the following compositions
5 (among many others): "Almond Grove", Copyright Registration No.
6 PAu003764032; "Get On Down the Road", Copyright Registration No.
7 PAu003745342; "King of Bakersfield", Copyright Registration No. PAu003745341;
8 "Tonight I Cross the Border", Copyright Registration No. PAu003745338;
9 "Sugartown", Copyright Registration No. PA0001919183; "Out Like A Lion",
10 Copyright Registration No. PA0001919183; "Darken Your Door", Copyright
11 Registration No. PA0001919183; and "You Got Yourself Into This", Copyright
12 Registration No. PAu003745326. Plaintiffs have received Certificates of Copyright
13 Registration from the Register of Copyrights for these Works. (See Exhibit E.) On
14 each of the Certificates of Copyright Registration attached hereto, Plaintiffs'
15 identifying information is readily available, as is the contact information with respect
16 to requesting rights and permissions in connection with those registered Works.

17 30. Indeed, in admission of its wrongdoing, in February 2016, Rhapsody
18 (through its third party agent the Harry Fox Agency) issued forty-four NOIs to
19 Plaintiff Lowery pertaining to approximately 100 different musical works embodied
20 in sound recordings by Cracker and Camper Van Beethoven (the "2016 NOIs"). The
21 2016 NOIs (all identifying Rhapsody as the "Licensee") reflect unlawfully backdated
22 "Expected Date[s] of Distribution" ranging from February 2, 2005 to June 3, 2015.
23 Given Rhapsody's failure to timely transmit NOIs pursuant to 17 U.S.C. § 115(b)(1),
24 the 2016 NOIs are invalid, and Rhapsody is foreclosed from the "possibility of a
25 compulsory license" and its failure to alternatively obtain a negotiated license from
26 Plaintiffs renders Rhapsody's unlicensed making and distribution of Plaintiffs'
27 musical works "actionable as acts of infringement" pursuant to 17 U.S.C. §115(b)(2).
28

1 31. Rhapsody's egregious and willful violations of Plaintiffs' and the Class
2 Members' rights are highlighted by its 2016 NOIs containing the conspicuously
3 backdated "Expected Date[s] of Distribution." Moreover, in addition to its own
4 ability to research the identity of mechanical rights owners, Rhapsody utilizes the
5 Harry Fox Agency to provide its mechanical licensing services, which on information
6 and belief, controls one of the largest databases on music compositions in the world,
7 and the most comprehensive database in the United States. As the 2016 NOIs
8 demonstrate, Rhapsody, either directly or through its agent, the Harry Fox Agency,
9 possessed the means to identify and locate the rightholders of musical works being
10 reproduced and/or distributed on its streaming platform, but opted not obtain the
11 required licensing prior to streaming such musical works.

12 32. Indeed, the Copyright Act also provides a specific methodology to
13 obtain a mechanical license for the distribution and/or reproduction of copyrighted
14 works even when the licensee has conducted a search for the rightholder but has
15 been unable to identify him or her. Specifically, 17 U.S.C. §115(b)(1) provides that,
16 "If the registration or other public records of the Copyright Office do not identify the
17 copyright owner and include an address at which notice can be served, it shall be
18 sufficient to file the notice of intention in the Copyright Office." Per the U.S.
19 Copyright Office. (rev. 10/2015) Circular 73, Compulsory License for Making and
20 Distributing Phonorecords (attached hereto as Exhibit F), only two steps are needed
21 to effectuate such notice: (1) file an NOI in the Licensing Division of the Copyright
22 Office; and (2) send the Copyright Office a statutory filing fee for each title listed in
23 the NOI. (*Id.*, at 3.) The NOI filing fees, effective May 1, 2014, are \$75 for the first
24 title, and \$20 for each additional title (per group of 10). (*See* U.S. Copyright Office,
25 "Licensing Fees", *available at* <http://copyright.gov/licensing/fees.html> (last visited
26 Feb. 28, 2016). There is no valid reason for Rhapsody's failure to use this statutory
27 procedure for obtaining a compulsory license for the Works where the copyright
28 owner is legitimately unknown, leading to the ineluctable conclusion that Rhapsody

1 (1) failed to make reasonable efforts to identify the rightsholders, and/or (2) decided
2 not to comply with the compulsory licensing process for unidentified rightsholders.

3 33. As a direct and proximate result of Rhapsody's conduct alleged herein,
4 Plaintiffs and the Class Members are entitled to recover all proceeds and other
5 compensation received or to be received by Rhapsody for its failure to pay royalties.
6 This includes any interest accrued on the royalty funds inappropriately withheld from
7 Plaintiffs and the Class Members. Plaintiffs and the Class Members have been
8 damaged, and Rhapsody has been unjustly enriched, in an amount that is not as yet
9 fully ascertained but which Plaintiffs is informed and believes is not less than
10 \$150,000,000, according to proof at trial.

11 34. The Copyright Act provides statutory penalties to discourage
12 Rhapsody's infringement, including statutory damages awards of between \$750 and
13 \$30,000 for each infringed work, and up to \$150,000 for a willful infringement.

14 CLASS ALLEGATIONS

15 35. Plaintiffs bring this action on behalf of themselves and on behalf of all
16 other similarly situated owners of mechanical rights for registered musical
17 compositions, which rights were improperly infringed by Rhapsody's unlicensed
18 reproduction and/or distribution of those compositions. The proposed class is
19 comprised of and defined as follows:

20 All owners of mechanical distribution and reproduction rights in
21 musical compositions registered under United States federal law,
22 which compositions were reproduced or distributed by Rhapsody
23 without Rhapsody first obtaining a voluntary or compulsory license,
24 since March 7, 2013.

25 As defined above, the proposed class does not consist of the following individuals
26 (among others): nonrightsholders of mechanical rights, owners of musical
27 compositions that are not registered under United States federal law, and owners of
28

1 registered compositions for which a voluntary or compulsory mechanical license was
2 provided to Rhapsody.

3 36. This action may be properly brought and maintained as a class action
4 because there is a well-defined community of interest in the litigation and the
5 members of the proposed class are clearly and easily ascertainable and identifiable.
6 The required elements of membership for the class, such as ownership of mechanical
7 distribution and reproduction rights in registered musical compositions within a
8 particular time frame are objective and ascertainable.

9 37. The class for whose benefit this action is brought is so numerous that
10 joinder of all class members is impracticable. Plaintiffs are informed and believe that
11 there are hundreds or thousands of class members and that those class members can
12 be readily ascertained from Rhapsody's database files and records, and via discovery
13 in this action. For example, Rhapsody should maintain records of all of the musical
14 compositions it reproduces or distributes. Upon information and belief, Rhapsody
15 has ready access to the largest database of mechanical rightsholders in the United
16 States, via its agent, the Harry Fox Agency, in order to identify class members.
17 Rhapsody may also access the United States Copyright Office's catalogue and other
18 records to conduct a search, or have the Copyright Office conduct a search for
19 Rhapsody. In addition, upon information and belief, Rhapsody also maintains
20 records of rightsholders who have submitted complaints to Rhapsody for its use of
21 their Works without license. Rhapsody may also seek to obtain information about
22 potential class members from performing rights organizations such as ASCAP, BMI,
23 or SESAC. There are also third party interactive streaming music royalty collection
24 agencies which may conduct audits to identify the musical compositions for which
25 Rhapsody has failed to obtain mechanical licenses. Of course, potential class
26 members may also, and already have, self-identify. The Class Members can also be
27 readily located and notified of this action.

28

1 38. The claims of Plaintiffs are typical of the claims of the members of the
2 class, and their interests are consistent with and not antagonistic to those of the other
3 class members they seek to represent. Plaintiffs hold the rights to multiple musical
4 compositions which Rhapsody has reproduced and/or distributed without license and
5 without providing notification to Plaintiffs. Plaintiffs and all members of the class
6 have sustained actual pecuniary loss and face irreparable harm arising out of
7 Rhapsody's continued infringement as complained of herein.

8 39. Plaintiffs have no interests that are adverse to, or which conflict with,
9 the interests of the absent members of the class and are able to fairly and adequately
10 represent and protect the interests of such a class. Plaintiffs have raised a viable
11 copyright infringement claim of the type reasonably expected to be raised by
12 members of the class, and will vigorously pursue those claims. If necessary,
13 Plaintiffs may seek leave of the Court to amend this Complaint to include additional
14 class representatives to represent the class or additional claims as may be appropriate.
15 Plaintiffs are represented by experienced, qualified and competent counsel who are
16 committed to prosecuting this action.

17 40. Common questions of fact and law exist as to all members of the class
18 that predominate over any questions affecting only individual members of the class.
19 These common legal and factual questions, which do not vary from class member to
20 class member, and which may be determined without reference to the individual
21 circumstances of any class member include, without limitation, the following:

22 (A) Whether Rhapsody engaged in the practice of reproducing,
23 distributing or otherwise exploiting registered musical
24 compositions without first obtaining a mechanical license;

25 (B) Whether Rhapsody failed to comply with the compulsory
26 licensing requirements of the Copyright Act, 17 U.S.C. § 115,
27 including filing of Notices of Intent with the U.S. Copyright
28 Office;

1 (C) Whether Rhapsody's reproduction, distribution or other
2 exploitation of registered musical compositions without first
3 obtaining a mechanical license constitutes a violation of the
4 Copyright Act, 17 U.S.C. §§ 106 and 501;

5 (D) Whether Rhapsody's unlicensed reproduction, distribution or
6 other exploitation of registered musical compositions was done
7 willfully, thereby entitling the members of the class to increased
8 statutory damages; and

9 (E) The basis and method for determining and computing damages.

10 41. A class action is superior to other available methods for the fair and
11 efficient adjudication of this controversy since individual litigation of the claims of
12 all class members is impracticable. The claims of the individual members of the
13 class may range from smaller sums to larger sums, depending upon the number of
14 Works infringed. Thus, for those class members with fewer Works infringed, the
15 expense and burden of individual litigation may not justify pursuing the claims
16 individually. And even if every member of the class could afford to pursue
17 individual litigation—which is highly unlikely in the independent artist community—
18 the court system could not. It would be unduly burdensome to the courts in which
19 individual litigation of numerous cases would proceed. Individualized litigation
20 would also present the potential for varying, contradictory, or inconsistent judgments
21 and would magnify the delay and expense to all parties and to the court system
22 resulting from multiple trials of the same factual issues. On the other hand, the
23 maintenance of this action as a class action presents few management difficulties,
24 conserves the resources of the parties and of the court system, and protects the rights
25 of each member of the class. Plaintiffs anticipate no difficulty in the management of
26 this action as a class action.

COUNT ONE**(Direct Copyright Infringement - 17 U.S.C. §§ 106 and 501)**

1
2
3 42. Plaintiffs and the Class reallege and incorporate by reference each and
4 every allegation contained in paragraphs 1 through 41 of the Complaint with the
5 same force and effect as if fully set forth at length herein.

6 43. Rhapsody, without license from Plaintiffs and the Class, has made
7 unauthorized reproductions and/or engaged in unauthorized distribution of Plaintiffs'
8 and Class Members' copyrighted musical compositions, including but not limited to,
9 those compositions listed in paragraph 29, *infra*. Such conduct constitutes
10 infringement of Plaintiffs' and Class Members' registered copyrights in violation of
11 17 U.S.C. §§ 106, *et seq.* and 501.

12 44. The infringement of Plaintiffs' and Class Members' rights in each of
13 their copyrighted compositions constitutes a separate and distinct act of infringement.

14 45. Rhapsody's conduct is willful, intentional, purposeful, in disregard of
15 and indifferent to the rights of Plaintiffs and Class Members.

16 46. As a direct and proximate result of Rhapsody's willful and infringing
17 conduct, Plaintiffs and Class Members are entitled to the maximum statutory
18 damages or to their actual damages and Defendant's profits, whichever are higher,
19 against Defendant pursuant to 17 U.S.C. § 504(b). Plaintiffs and Class Members will
20 elect whether or not to seek statutory damages prior to final judgment. Plaintiffs and
21 Class Members are also entitled to attorney's fees and costs by virtue of Defendant's
22 infringement pursuant to 17 U.S.C. § 505.

23 47. Defendant's acts have caused and will continue to cause irreparable
24 harm and injury to Plaintiffs and Class Members for which they have no adequate
25 remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs and Class Members are
26 therefore entitled to a preliminary injunction and a permanent injunction prohibiting
27 infringement of Plaintiffs' and Class Members' copyrights and exclusive rights under
28 United States law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all other persons similarly situated, respectfully pray for relief against Defendant as follows:

1. Certify this matter as a class action;
2. Enter an order appointing Plaintiffs as class representatives and Plaintiffs' counsel as class counsel;
3. Enter judgment in favor of Plaintiffs and the Class;
4. Enter injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiffs and the Class (17 U.S.C. § 502), including enjoining Defendant from continued copyright infringement and violations of the relevant provisions of the Copyright Act;
5. Enter injunctive relief that requires Rhapsody to pay for the services of a third party auditor to identify the owners of Works reproduced and/or distributed by Rhapsody despite Rhapsody's failure to first obtain a mechanical license prior to reproducing and/or distributing the Works, and further requiring Rhapsody to remove all such Works from its services until it obtains proper licenses for them;
6. Award compensatory damages to Plaintiffs and the Class in an amount to be ascertained at trial;
7. Award statutory damages to Plaintiffs and the Class according to proof, including but not limited to all penalties authorized by the Copyright Act (17 U.S.C. §§ 504(c)(1), 504(c)(2));
8. Award reasonable attorneys' fees and costs (17 U.S.C. § 505);
9. Award Plaintiffs and the Class pre- and post-judgment interest to the extent allowable; and
10. Award such other and further relief that the Court may deem just and proper.

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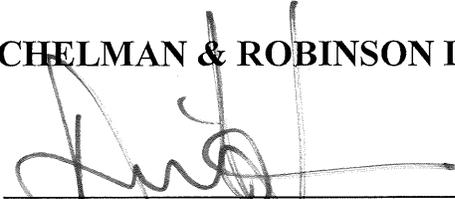
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DEMAND FOR JURY TRIAL

Plaintiffs and the Class hereby demand a trial by jury, pursuant to L.R. 3-6.

Dated: March 7, 2016

MICHELMAN & ROBINSON LLP

By 

Sanford L. Michelman
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David C. Lee
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Melanie Natasha Howard
*Attorneys for Plaintiffs and Proposed
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EXHIBIT A

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Rhapsody End User License Agreement

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Rhapsody International Inc.
Attn: Customer Service
1420 5th Avenue, Suite 1500
Seattle, WA 98101

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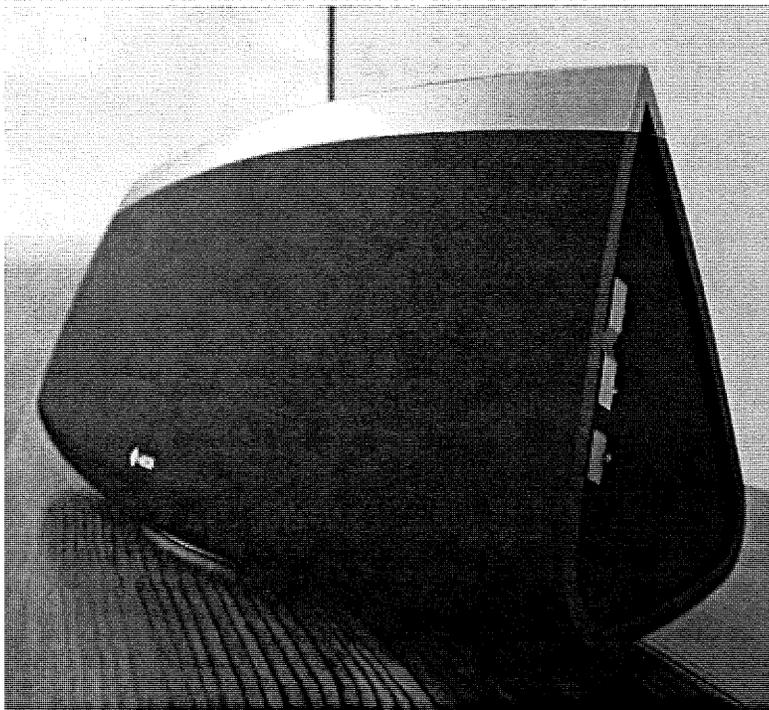


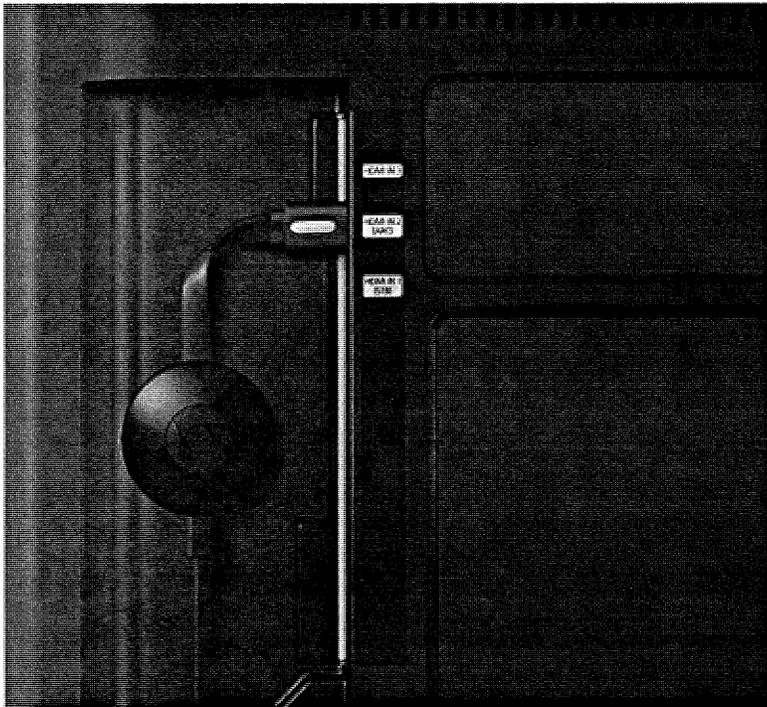
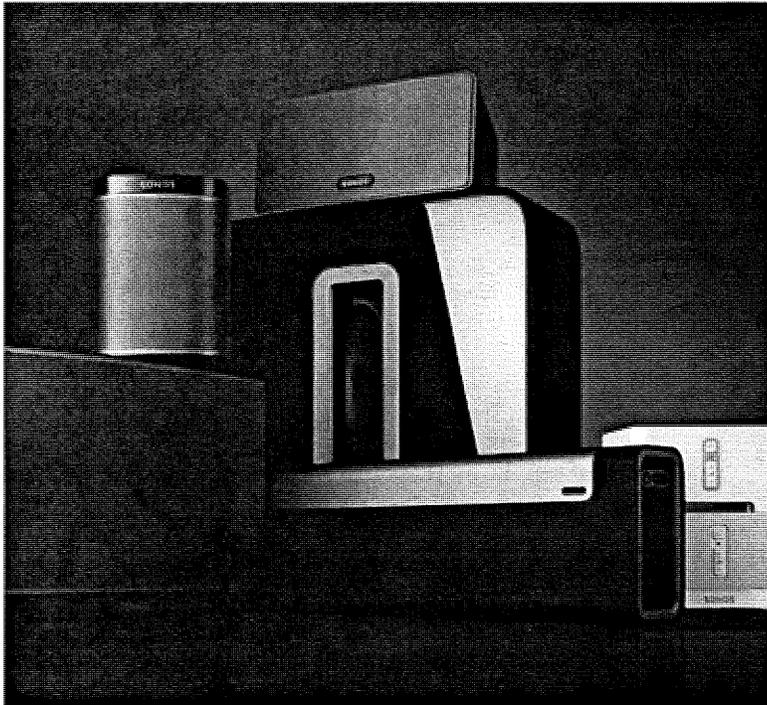
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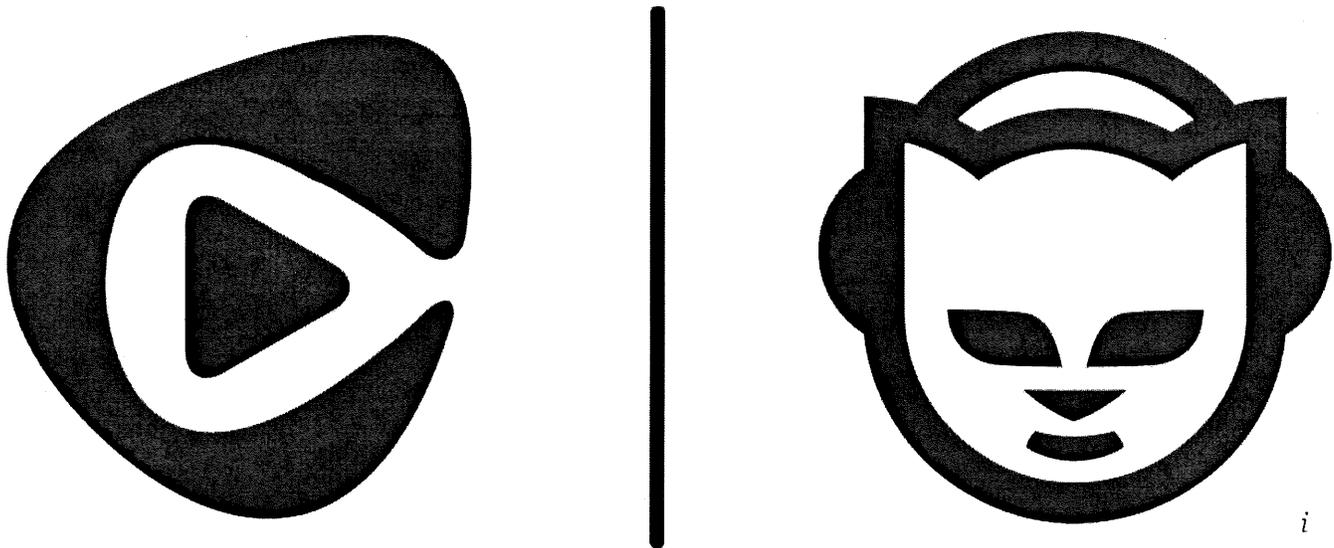
EXHIBIT C



BY RHAPSODY TEAM

([HTTP://NEWS.RHAPSODY.COM/AUTHOR/USWSTEAM/](http://news.rhapsody.com/author/uswsteam/)) / JULY 29,
2014

RHAPSODY INTERNATIONAL REACHES TWO MILLION SUBSCRIBERS FOR ITS PREMIUM MUSIC SERVICES: RHAPSODY, NAPSTER & UNRADIO



Today, we announced that Rhapsody International has more than two million paying subscribers globally for its premium music services, including Napster, Rhapsody and its recently launched Internet radio service, Rhapsody unRadio. This is a significant milestone for Rhapsody International and the music subscription model it has championed since 2001.

Rhapsody International also announced it will extend Napster's presence in Europe and in Latin America through expanded partnerships with two of the world's largest mobile telecommunications companies, SFR and Telefonica, to make Napster-branded music services available to those companies' mobile customers.

Last month, Rhapsody launched a breakthrough new Internet radio service, Rhapsody unRadio, in partnership with United States mobile operator T-Mobile. With unRadio, listeners can skip an unlimited number of songs, listen without annoying and intrusive advertisements, and when they hear a song they love, they can mark it as a favorite and automatically save it for later listening - even when they're offline.

Now, Rhapsody's Napster division and SFR, France's second largest mobile operator, are bringing this radio service to Europe for the first time. SFR and Napster are making this service available to users in France under the Napster brand, as Napster Decouverte (Napster Discovery).

Napster Decouverte, which is available now for €3.95 (3.95 Euros) per month, will be marketed alongside the Napster Premier service that SFR and Rhapsody launched last fall, giving French music fans two great ways to discover and enjoy music through Napster.

In Latin America, Napster and Telefonica have launched and are actively promoting the Napster Premier service in several new countries, including Argentina, Chile and Uruguay. These commercial launches are the result of a strategic agreement Rhapsody and Telefonica announced last fall, through which select Telefonica operating businesses in Europe and Latin America will deliver the Napster Premier music service to mobile and fixed line customers.

"Today is a day to thank the Rhapsody and Napster members around the world whose passion and insane love of music motivate us every day," said Paul Springer, senior vice president, for the Americas and chief product officer of Rhapsody International. "Our recently launched radio service underscores our commitment to giving mobile music fans even more ways to discover and download great music. We're excited to build on our U.S. momentum by launching this service in Europe, in partnership with SFR."

Rhapsody and Napster users are highly engaged with the service and its global catalog of more than 32 million tracks, with more than 80% of listening happening on mobile. Over the past three months, the songs, albums and artists most popular with Rhapsody and Napster members included:

Most popular songs:

- Global - "Happy" by Pharrell Williams
- United States - "Fancy" by Iggy Azalea featuring Charli XCX
- Latin America - "Happy" by Pharrell Williams
- Europe - "Rather Be" by Clean Bandit feat. Jess Glyne

Most popular albums:

- Global - "G I R L" by Pharrell Williams
- United States - "Nothing was the Same" by Drake
- Latin America - "Live in London - At the Royal Albert Hall" by Julio Iglesias
- Europe - "Frozen" by Various Artists

Most popular artists:

- Global - Michael Jackson
- United States - Eminem
- Latin America - Jorge & Mateus
- Europe - Coldplay

Check back soon to get the latest updates on Rhapsody and Napster.

EXHIBIT D



BY RHAPSODY TEAM

(HTTP://NEWS.RHAPSODY.COM/AUTHOR/USWSTEAM/) / JULY 22, 2015

3M REASONS TO CELEBRATE



“/

Go 0 to 3 Million Real Quick”

Today, we’re celebrating more than three million music lovers listening on Rhapsody and Napster across the world. What a difference a year makes. The past 12 months have been the fastest growth period in our 13-year history. Last summer,

we celebrated hitting two million subscribers, and now, in under a year, we've increased our subscriber base by 50 percent.

This is not without some extreme change in our industry. The entrance of new competitors makes us even more confident that we were onto something when we built the first streaming music service back in 2001.

While we're proud of what we started, we're not stopping. Our growth continues to be fueled by mobile listening and expansion in emerging markets. Some of the things we're most proud of:

- **Mobile is (still) king:** Mobile users are up 60 percent from this time last year.
- **Piracy markets are evolving:** We've had tremendous success in countries where the level of piracy has traditionally been high. We've added 100,000 new customers in Italy, which has been a hotbed for piracy. And Colombia and Brazil are our fastest growing markets, where poor internet connectivity is a key factor behind elevated music piracy rates.
- **The Twittersphere is hungry for music:** In March, we became the first music service to bring fully-licensed music to Twitter with Audio Cards. Artists love Rhapsody Audio Cards as a new way to bring music to their fans. Wiz Khalifa, Mariah Carey, and Fifth Harmony have shared audio cards, and even Wale used a Rhapsody Audio Card to premiere a new song to the world.
- **Our members are data smart:** As we've watched our members increasingly go mobile, we know that there's a potential impact on your data usage. To make sure you can stay data smart, we made the offline button more

visible and you've noticed. Offline listening surged by almost 40 percent over the last six months.

- **Music Inbox:** This summer, we introduced a weekly music concierge to match your listening history and favorite artists with new music each week. To date we have delivered over one million personalized music recommendations directly to Rhapsody subscribers.

One of the things that we're most proud of at Rhapsody and Napster is we're building a service that's personalized for you - not one that tells you what you should like. In addition to our new Music Inbox feature that rolled out this summer, we continue to bring the most complete catalog of music to fans in every country where we offer our service. Listeners in France listen to significantly more music from local artists than global superstars, so we make sure that the catalog for Napster in France is as deep as our members need.

That's led us to see some interesting trends across how our members listen and the differences in our global base of three million music lovers:

- Rap and Hip-Hop remain top genres in the US, while pop is king in Germany, UK and Brazil.
- The top three artists in the US are Drake, Eminem, and Nicki Minaj, while David Guetta is among the most popular artists in Germany and Brazil.
- Global members are streaming more Rap and Hip-Hop than any other genre; Electronica and Dance are close behind with the second-fastest growth.
- Although you listen differently based on where you live, Drake is the most popular artist, uniting fans globally.

While we're taking a moment to celebrate and say thanks to our amazing members - know that we're not done. Our teams across the world - from Seattle to Frankfurt to Sao Paulo - are hard at work on some exciting updates to the Rhapsody and Napster experience that we can't wait to show you. Just know that we'll continue to bring you the most personalized music experience.

EXHIBIT E



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Copyright Catalog (1978 to present)

Search Request: Left Anchored Title = almond grove

Search Results: Displaying 1 of 1 entries

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Labeled View

Almond Grove.

Type of Work: Music

Registration Number / Date: PAu003764032 / 2015-01-22

Application Title: Almond Grove.

Title: Almond Grove.

Description: Electronic file (eService)

Copyright Claimant: David Charles Lowery. Address: 5911 w broad st, richmond, VA, 23230, United States.

Date of Creation: 2014

Authorship on Application: David Charles Lowery; Domicile: United States; Citizenship: United States.
Authorship: music, lyrics.

Rights and Permissions: velen a m vego, Po Box 655, Athens, GA, 30603, United States, (706) 549-2740, velenavego@gmail.com

Copyright Note: C.O. correspondence.

Names: Lowery, David Charles

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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Title = get on down the road

Search Results: Displaying 3 of 18 entries

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Labeled View

Get On Down The Road.

Type of Work: Music

Registration Number / Date: PAu003745342 / 2014-10-17

Application Title: Get On Down The Road.

Title: Get On Down The Road.

Description: Electronic file (eService)

Copyright Claimant: David C Lowery. Address: 5911 W. Broad St, Richmond, VA, 23230, United States.

Date of Creation: 2013

Authorship on Application: David Charles Lowery, 1960- ; Domicile: United States; Citizenship: United States.
Authorship: music, lyrics.

Rights and Permissions: Velen M Vego, PO Box 655, Athens, GA, 30603, United States, (706) 549-2740,
velenavego@gmail.com

Names: Lowery, David Charles, 1960-

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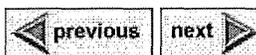
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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Title = king of bakersfield

Search Results: Displaying 1 of 1 entries



Labeled View

King Of Bakersfield.

Type of Work: Music

Registration Number / Date: PAu003745341 / 2014-10-17

Application Title: King Of Bakersfield.

Title: King Of Bakersfield.

Description: Electronic file (eService)

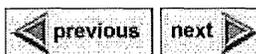
Copyright Claimant: David C Lowery. Address: 5911 W. Broad St, Richmond, VA, 23230, United States.

Date of Creation: 2013

Authorship on Application: David Charles Lowery, 1960- ; Domicile: United States; Citizenship: United States.
Authorship: music, lyrics.

Rights and Permissions: Velena M Vejo, PO Box 655, Athens, GA, 30603, United States, (706) 549-2740,
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Names: Lowery, David Charles, 1960-



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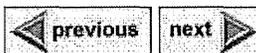
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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Title = tonight i cross the border

Search Results: Displaying 1 of 1 entries



Labeled View

Tonight I Cross The Border.

Type of Work: Music

Registration Number / Date: PAu003745338 / 2014-10-17

Application Title: Tonight I Cross The Border.

Title: Tonight I Cross The Border.

Description: Electronic file (eService)

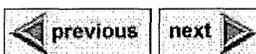
Copyright Claimant: David C Lowery. Address: 5911 W. Broad St, Richmond, VA, 23230, United States.

Date of Creation: 2014

Authorship on Application: David Charles Lowery, 1960- ; Domicile: United States; Citizenship: United States.
Authorship: music, lyrics.

Rights and Permissions: Velen M Vego, PO Box 655, Athens, GA, 30603, United States, (706) 549-2740, velenavego@gmail.com

Names: Lowery, David Charles, 1960-



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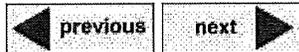
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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Title = sugartown

Search Results: Displaying 5 of 39 entries



Labeled View

El Camino Real.

Type of Work: Music

Registration Number / Date: PA0001919183 / 2014-07-06

Application Title: El Camino Real.

Title: El Camino Real.

Description: Compact disc.

Copyright Claimant: Camper Van Beethoven, Transfer: By written agreement. Address: 5911 W. Broad Street, Richmond, VA, 23230.

Date of Creation: 2014

Date of Publication: 2014-06-03

Nation of First Publication: United States

Authorship on Application: David C Lowery; Citizenship: United States. Authorship: music, lyrics.

Victor H Krummenacher; Citizenship: United States. Authorship: music, lyrics.

Greg Alan Lisher; Citizenship: United States. Authorship: music, lyrics.

Jonathan Ehren Segel; Citizenship: United States. Authorship: music, lyrics.

Rights and Permissions: Velenavego, velenavego@gmail.com

Copyright Note: C.O. correspondence.

Contents: The Ultimate Solution.

It Was Like That When We Got Here.

Classy Dames and Able Gents.

Camp Pendleton.

Dockweiler Beach.

Sugartown.

I Live In LA.

Out Like A Lion.

Goldbase.

Darken Your Door.

Grasshopper.

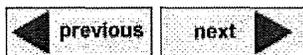
Names: Lowery, David C

Krummenacher, Victor H

Lisher, Greg Alan

Segel, Jonathan Ehren

Camper Van Beethoven



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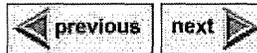
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Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Title = you got yourself into this

Search Results: Displaying 1 of 1 entries



Labeled View

You Got Yourself Into This.

Type of Work: Music

Registration Number / Date: PAu003745326 / 2014-10-16

Application Title: You Got Yourself Into This.

Title: You Got Yourself Into This.

Description: Electronic file (eService)

Copyright Claimant: David C Lowery. Address: 5911 W. Broad St, Richmond, VA, 23230, United States.

Date of Creation: 2014

Authorship on Application: David Charles Lowery, 1960- ; Domicile: United States; Citizenship: United States. Authorship: music, lyrics.

John Arthur Hickman, 1956- ; Domicile: United States; Citizenship: United States. Authorship: music.

David Allen Faragher; Domicile: United States; Citizenship: United States. Authorship: music.

Michael Urbano; Domicile: United States; Citizenship: United States. Authorship: music.

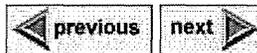
Rights and Permissions: Velena M Vego, PO Box 655, Athens, GA, 30603, United States, (706) 549-2740, velenavego@gmail.com

Names: Lowery, David Charles, 1960-

Hickman, John Arthur, 1956-

Faragher, David Allen

Urbano, Michael



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EXHIBIT F



Compulsory License for Making and Distributing Phonorecords

Section 115 of the Copyright Act provides a compulsory license to make and distribute phonorecords once a phonorecord of a work has been distributed to the public in the United States under authority of the copyright owner, subject to certain terms and conditions of use. Such a license includes the right of the compulsory licensee to make and distribute, or to authorize the making and distribution of, a phonorecord of a nondramatic musical work by means of a digital transmission, which constitutes a digital phonorecord delivery. The Copyright Office's regulations set out in detail the procedures that must be followed to operate under a compulsory license. See sections 201.18 and 210 of title 37 of the *Code of Federal Regulations*.

Frequently Asked Questions

The Licensing Division often receives questions about the following points regarding the section 115 compulsory license.

What Is a Phonorecord?

The statute defines phonorecords as "material objects in which sounds, *other than those accompanying a motion picture or other audiovisual work*, are fixed." (See section 101 of the copyright law.) Since the compulsory license applies only to the making and distributing of phonorecords, and soundtracks are not phonorecords, the compulsory license is not available to those who want to record a soundtrack.

What Is a Digital Phonorecord Delivery?

The term *digital phonorecord delivery*, or DPD, is defined, in part, as each individual delivery of a phonorecord by digital transmission of a sound recording that results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording. A digital phonorecord delivery includes all phonorecords that are made for the purpose of making the digital phonorecord delivery. (See section 210 of title 37 of the *Code of Federal Regulations*.)

Must One Use a Compulsory License?

No. Anyone wishing to make and distribute phonorecords of a nondramatic musical work can negotiate directly with the copyright owner or his or her agent. But if the copyright owner is unwilling to negotiate, or if the copyright

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owner cannot be contacted, the person intending to record the work or make a DPD can use the compulsory licensing provisions of the copyright law.

When Can One Obtain a Compulsory License?

A compulsory license is available to anyone as soon as “phonorecords of a nondramatic musical work have been distributed to the public in the *United States and its territories* under the authority of the copyright owner.”

NOTE: For the purpose of computing royalties, a phonorecord will generally be considered “voluntarily distributed” if the compulsory licensee has voluntarily and permanently parted with possession of the phonorecord. A digital phonorecord delivery will be treated as having been voluntarily distributed and relinquished from possession, and a compulsory licensee will be treated as having permanently parted with possession of a digital phonorecord delivery, on the date the phonorecord is digitally transmitted.

Does a Compulsory License Also Cover Making and Reproducing a Sound Recording?

No. Section 115 does not cover sound recordings. Rather, it covers the reproduction and distribution of musical compositions. It is important to note that there are two separate components of a musical work: the musical composition and the sound recording. A musical composition consists of music, including any accompanying words. The author of a musical composition is generally the composer and the lyricist, if there are lyrics. A musical composition can be in the form of a notated copy (for example, sheet music); a phonorecord (for example, cassette tape, LP, or CD); or a DPD. A sound recording, on the other hand, results from the fixation of a series of musical, spoken, or other sounds. The author of a sound recording is the performer(s) whose performance is fixed, the record producer who processes the sounds and fixes them in the final recording, or both. Copyright in a sound recording is not the same as, or a substitute for, copyright in the underlying musical composition. A separate license must be obtained from the copyright owner of the sound recording before a musical work can be used.

Under What Conditions Can One Obtain a Compulsory License?

A compulsory license can be obtained only if the primary purpose in making the phonorecords is to *distribute them to the public for private use*. It is not available for phonorecords intended for use in background music systems, jukeboxes, broadcasting, or any other public use.

Can One Make a New Arrangement of the Copyrighted Musical Work for the Recording?

Yes. The compulsory license includes the privilege of making a musical arrangement of the work to the “extent necessary to conform it to the style or manner of interpretation of the performance involved.” However, section 115 also provides that the arrangement “shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work ... except with the express consent of the copyright owner.”

Steps to Obtain a Compulsory License

The first step is to identify the copyright owner of the nondramatic musical work. This can be done by either personally searching the records of the Copyright Office or asking the Copyright Office to conduct a search. For details about searching Copyright Office files, see Circular 22, *How to Investigate the Copyright Status of a Work*, and Circular 75, *The Licensing Division of the Copyright Office*. These circulars are available on the Copyright Office website at www.copyright.gov.

The second step in obtaining a compulsory license depends on the findings of the search for a copyright owner.

If the Name and Address of the Copyright Owner Are Known

- 1 Before or within 30 days of making, and before distributing, any phonorecords of the work, serve a Notice of Intention to Obtain a Compulsory License on the copyright owner or authorized agent of the owner. There is no need to file a copy of the notice in the Copyright Office.

NOTE: A notice of intention can designate any number of nondramatic musical works, provided that the copyright owner of each designated work is the same or, in the case of any work having more than one copyright owner, any one of the copyright owners is the same and provided that certain other information required in the notice does not vary. (See section 201.18 of title 37 of the *Code of Federal Regulations* for more information and regulations.)

- 2 Make royalty payments, accompanied by a monthly statement of account, to the copyright owner or authorized agent of the owner on or before the 20th day of each month for every phonorecord made and distributed in accordance with the license.

- 3 File with the copyright owner or authorized agent of the owner a detailed annual statement of account, certified by a certified public accountant.

If the Owner Is No Longer at the Address or Refuses to Accept Delivery

If the Notice of Intention to Obtain a Compulsory License is sent by mail or reputable courier service to the last address for the copyright owner shown in the records of the Copyright Office, or to an updated address otherwise identified, and the notice is returned to the sender because the copyright owner is no longer located at the address or has refused to accept delivery, file the original notice as sent in the Licensing Division of the Copyright Office. Include a brief statement specifying that the notice was sent to the last address identified for the copyright owner but was returned; appropriate evidence that it was mailed to that address may be submitted. No filing fee is required for notices filed under these circumstances. (See section 201.18 of title 37 of the *Code of Federal Regulations* for more information and regulations.)

The Licensing Division will acknowledge receipt of the filing.

If the Name and Address of the Copyright Owner Are Not Known

- 1 File a Notice of Intention to Obtain a Compulsory License in the Licensing Division of the Copyright Office (see the address at the end of this section).
- 2 Submit the statutory filing fee for each title listed in the notice in a single payment. (See *SL 41, Copyright Office Licensing Division Service Fees*, available on the Copyright Office website.) The Licensing Division will acknowledge receipt of the filing. However, if certification of a document is required, see *Circular 6, Obtaining Access to and Copies of Copyright Office Records and Deposits*, for information and associated fees.
- 3 Make checks payable to *Register of Copyrights* or authorize deduction from a deposit account for the filing fee. (See *Circular 5, How to Open and Maintain a Copyright Office Deposit Account*.)

IMPORTANT: The name and address of the copyright owner may be known or appear in the records of the Copyright Office at a later time. Since royalty payments must be made after the copyright owner is identified, the licensee should periodically search these records to ascertain if the copyright owner has been identified. *If and after* the copyright owner is identified, the licensee should make royalty payments for phonorecords made and distributed directly to the copyright owner or

authorized agent of the owner. Do not send royalty payments to the Copyright Office.

The Copyright Office does not provide forms for the Notice of Intention to Obtain a Compulsory License, the monthly statement of account, or the annual statement of account. For detailed instructions about the content of the notice of intention and statements of accounts, see sections 201.18 and 201.19 of title 37 of the *Code of Federal Regulations* or contact the Licensing Division of the Copyright Office:

Copyright Royalty Board
Attn: Licensing Division
P.O. Box 70977
Washington, DC 20024-0977

TEL: (202) 707-8150
 FAX: (202) 707-0905
 EMAIL: licensing@loc.gov
 WEB: www.copyright.gov/licensing

Licensing Division staff members are available to answer questions between 8:30 AM and 5:00 PM, eastern time, Monday through Friday, except federal holidays. The Licensing Division is in the James Madison Memorial Building of the Library of Congress, located on Capitol Hill between First and Second Streets, SE, Washington, D.C.

What Are the Current Royalty Rates for Using the Compulsory License?

For current copyright royalty rates under the compulsory license for making and distributing phonorecords, see *Mechanical Copyright Royalty Rates* at www.copyright.gov/licensing/m200a.pdf or contact the Licensing Division of the Copyright Office.

Rate-Setting Proceedings

The Copyright Royalty Board, created under the Copyright Royalty and Distribution Reform Act of 2004, sets the rates and terms for use of the compulsory licenses in accordance with copyright law. For information about rate setting, write to the Copyright Royalty Board at P.O. Box 70977, Washington, DC 20024-0977; call (202) 707-7658; or visit www.loc.gov/crb.

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