

Monday, June 12, 2023

Via Email

Attn: Ms. Shira Perlmutter,
Register of Copyrights and Director
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C., 20559-6000

**Re: Study to Repeal §115 Compulsory License & *Ex Parte* Meetings
to benefit Congress and *all* U.S. Songwriters and Music Publishers**

Dear Register Perlmutter,

For the benefit of *all* American songwriters and music publishers “bound by”¹ the 114 year old §115 compulsory license, and to benefit Congress in their upcoming² decision making processes involving intellectual property law and music copyright policy, I respectfully request that the Copyright Office please initiate a compulsory license study and roundtables regarding its *full repeal*, including *ex parte* meetings.

The *century old* compulsory license is no longer an incentive or profitable for all U.S. songwriters and music publishers, and there are many problems arising from its use, and *misuse*, not intended by Congress, the Constitution, and copyright law.

The 1909 compulsory license was designed for a different time, for the local sale of piano rolls and not contemplated to be *used billions of times*, by the largest *trillion-dollar* corporations in the *history of the world*, with teams of attorneys, with *no sale*, by “access”, on “computers” or telephones, distributed digitally, through the *air*, and all for *free* from songwriters and publishers? Now, with *no* COLA for streaming.

Former Register Ms. Marybeth Peters initiated several studies³ that questioned the continued necessity of the compulsory license, and for its *full repeal* or *full reform*⁴. Unfortunately, those studies are now outdated and considering the vast changes in

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<https://www.federalregister.gov/documents/2022/03/30/2022-06691/determination-of-royalty-rates-and-terms-for-making-and-distributing-phonorecords-phonorecords-iv> March 30, 2022 *Withdrawal of Subpart B Final Rule* by the Copyright Royalty Board. Referencing §801(b)(7)(A) “That provision directs the Judges to provide *those who would be bound* by the negotiated rates and terms an opportunity to comment on the agreement.” Page 3 (emphasis added)

² Upcoming 5 year work product review of the Music License Collective (“MLC”) by Congress in 2024.

³ <https://www.copyright.gov/newsnet/2022/981.html> September 30, 2022 — In Memory of Marybeth Peters. “Her leadership of the Office also included the generation of several landmark studies, such as those on statutory licenses...”

⁴ To me, a full overhaul in *dollars* of the “nano-penny” *rate-structure* in §385 Subpart C streaming.

the delivery of musical works and sound recordings, experts^{5 6} now think a new study would be very helpful in *updating* Congress on how the license is functioning post Music Modernization Act (MMA), to benefit their 2024 MLC review, but primarily so Congress can make an informed decision on full repeal or full reform?

While my comments here are my own and separate from my participation in the current *Phonorecords III & IV* proceedings at the Copyright Royalty Board, please feel free to notify me if there is any conflict or other legal protocol to be followed.

Other than the obvious economic arguments to *finally pay* songwriters the *true value* of *their* copyrights, the primary reason I believe compulsory license roundtables are necessary and so dire is the 3 major record labels' current *anticompetitive* misuse of the compulsory license⁷ at the CRB (*See* #1, 2, 3 in the attached white paper) that I've experienced as a 4 time CRB participant and appellant in *Sound Exchange v. CRB*⁸ and *Johnson v. CRB*⁹. The 3 major labels' misuse of the license *is* the #1 issue including several dozen other serious issues.

The license, the *rate-structure*, and the CRB process are all *truly broken in almost every way* and must be *fixed immediately* or *completely abandoned*. All rational market actors who currently use private collective blanket licensing providers would certainly switch, proving no need for federal licensing to operate efficiently.

We *all* could really benefit from the Copyright Office's input, ideas, and legal opinions on these extremely important issues since each and every songwriter

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<https://musictechpolicy.com/2023/04/05/should-the-copyrightoffice-begin-at-the-beginning-with-the-mlcs-first-five-year-review/> April 5, 2023 — by attorney and *Phonorecords IV* Commenter Mr. Chris Castle. *Should the Copyright Office Begin at the Beginning With The MLC's First Five year Review* "The continued need for a song compulsory license is just the kind of information that Reps. Jordan and Issa could use in case they were inclined to just get rid of it. It would be a great topic for the Copyright Office to study and hold round tables on, this time preferably lead by a Copyright Office lawyer who was not being recruited by Spotify."

⁶ <https://musictechpolicy.com/2023/05/28/should-the-compulsory-license-be-re-upped/> May 28, 2023, *Should the Compulsory License Be Re-Upped?* by music attorney and official CRB Commenter Mr. Chris Castle.

⁷ ...through NMPA's, et al. re-writing all laws and definitions, and MMA, to fit label business models, not U.S. songwriters. This is also in *no way* the Judges fault, they have to deal with it too, so *reform* would help them. The Judges are *great* and not to blame when I say the process is broken,

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[https://www.cadc.uscourts.gov/internet/opinions.nsf/8AE80A6C0FBDFB7B8525830C004D863A/\\$file/16-1159-1751123.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/8AE80A6C0FBDFB7B8525830C004D863A/$file/16-1159-1751123.pdf) *SoundExchange, Inc. v. Copyright Royalty Board and Librarian of Congress*, Case No. 16-1159, consolidated with 16-1162 (DC Cir. Sept. 18, 2018) (Srinivasan, J)

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[https://www.cadc.uscourts.gov/internet/opinions.nsf/720464D843B0D6C7852585C10074B11B/\\$file/19-1028-1856124.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/720464D843B0D6C7852585C10074B11B/$file/19-1028-1856124.pdf) *George Johnson v. Copyright Royalty Board and Librarian of Congress*, Case No. 19-1028, (D.C. Cir. Aug. 7, 2020) (Henderson, Garland, and Millett)

cannot compete with RIAA and NMPA counsel, nor 25 years of their regulatory capture.

We songwriters truly need Congress and the Copyright Office's help and guidance.

We pray the Copyright Office¹⁰ will initiate a study with roundtables, in addition to *ex parte* communications and meetings to benefit Congress, and *all* American songwriters and music publishers “subject to”¹¹ the license — for these good reasons, good cause, and those contained in the following white paper attached below.

Thank you for your time and thoughtful consideration.

Respectfully,

George D. Johnson
Singer/Songwriter
615-242-9999
george@georgejohnson.com
PO Box 22091
Nashville, TN, 37202
@georgejohnson

cc: Librarian of Congress
General Counsel of the Copyright Office
U.S. House Judiciary Committee
U.S. Senate Judiciary Committee
Office of the TN Attorney General

¹⁰ <https://www.govinfo.gov/content/pkg/FR-2023-02-17/pdf/2023-03392.pdf> *Ex parte*.

¹¹ <https://app.crb.gov/document/download/3715> September 29, 2016, *SDARS III Order Denying Services' Motion To Dismiss George D. Johnson d/b/a Geo Music Group*. “The Services’ reliance on the Librarian’s decision in *PSS II*—a decision that involved neither a copyright owner nor a copyright user—is misplaced because it is based on an erroneous premise. Unlike the party in *PSS II*, *GEO is* subject to the license at issue...and *GEO* would have no say in the matter—that is the essence of a statutory license. For the forgoing reasons, the Judges **DENY** the Services’ Motion.”