

Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

Section 109 Report to the Congress

Docket No. 2007-1

**REPLY COMMENTS OF OUR OWN PERFORMANCE SOCIETY, INC. (OOPS)
CAN CAN MUSIC AND JAMES CANNINGS – COPYRIGHT OWNER
TO THE COMMENTS OF
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,
BROADCAST MUSIC, INC. AND SESAC, INC**

SUMMARY

On June 19, 2007 the Copyright Office, (“Office”), extended the time in which reply comments can be filed in response to its Notice of Inquiry requesting information for the preparation of the Section 109 Report to the Congress, as required by the Satellite Home Viewer Extension and Reauthorization Act of 2004. Reply Comments are due no later than October 1, 2007. FR 33376.

DISCUSSION

On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act of 2004, a part of the Consolidated Appropriations Act of 2004. See Pub. L. No. 108–447, 118 Stat. 3394 (2004) (hereinafter “SHVERA”). Section 109 of the SHVERA requires the Office to examine and compare the statutory licensing systems for the cable and satellite television industries under Sections 111, 119, and 122 of the Copyright Act and recommend any necessary legislative changes no later than June 30, 2008.

Earlier this year, the Office released a Notice of Inquiry (NOI) seeking comment on several issues associated with the matters identified in Section 109 of the SHVERA. See 72 FR 19039 (April 16, 2007). To further supplement the record, the Office announced the scheduling of public hearings for the purpose of taking testimony from interested persons. The hearings were held during the week of July 23, 2007. See 72 FR 28998 (May 23, 2007).

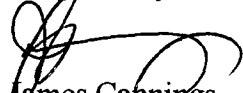
REPLY COMMENTS

Our Own Performance Society, Inc. (OOPS)/Can Can Music and James Cannings (“Independent Party”) hereby **objects** to the comments of American Society of Composers, Authors and Publishers, Broadcast Music, Inc. and SESAC, Inc (“PROs”), which by preference proposes that the compulsory licenses be abolished by Congress.

The main issue of transparency gives rise to the position taken by the Independent Party. The Independent Party discussed the issue of transparency at length before the Office at a prior hearing held in 1997. At that time the Office examined and compared the statutory licensing systems for the cable and satellite television industries under Sections 111, 119, and 122 of the Copyright Act and recommend necessary legislative changes to Congress.¹

It is respectfully submitted that that Summary of Testimony be incorporated herein as the Independent Party’s Reply Comments. Exhibit A.

Respectfully Submitted,



James Cannings – Copyright Owner
Our Own Performance Society, Inc. (OOPS)
Can Can Music

September 30, 2007

¹ Our Own Performance Society, Inc. (OOPS) was formed subsequent to that date. Cannings founded OOPS—Our Own Performance Society, Inc.—a not-for-profit corporation, which champions performing rights’ needs and lobbies on behalf of songwriters and music publishers.

EXHIBIT A

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

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In the Matter of: :
 :
 :
Revision Of The Cable And Satellite Carrier :
Compulsory Licenses :
 :
-----X

SUMMARY OF TESTIMONY

PREAMBLE

A miracle of the mind creates, "original works."

The Constitution grants, Congress the power to secure, for limited times, the exclusive Right in "original works."

In 1909, the Copyright Act guaranteed protection for, "original works of authorship."

From 1976 to the present, the compulsory licenses of the Copyright Law guarantees, exclusive copyright protection against copyright infringement.

The idea of Compulsory Licenses should be extended in perpetuity, subject to periodic revision.

REASONS WHY CABLE AND SATELLITE COMPULSORY LICENSES SHOULD BE EXTENDED IN PERPETUITY, SUBJECT TO PERIODIC REVISION

1. As a copyright owner, who owns the exclusive right to his "original works of authorship," copyright protection guaranteed through the compulsory license for this exclusive right, is perfect.

Specifically, cable and satellite compulsory licenses offers me and other individual copyright owners the right to monies paid in by copyright users on a statutory basis, for the use of his or her intellectual property and, the distribution of same, subject to certain statutory provisions.

The compulsory licenses also give individual copyright owners access to information that is normally considered by private enterprises, as privileged information. (see exhibit 1, letter to Mr Huey Cole, of the Copyright Office, dated April 22, 1992, which addresses this issue, along with others.)

2. Once a statutory royalty rate is set, there is no need to go from user to user and visa versa to negotiate.

3. The compulsory license, based on its provisions, is a forum for the meeting of the minds, i.e. the copyright owner and user, without direct contact.

4. The compulsory licenses encourages the freedom of trade. It is the forum of the free market place.

5. The compulsory license offers a forum, the CARP, to resolve controversies.

6. The career personnel of the Copyright Office specialize in copyright and, compulsory licensing rules, regulations and procedures and, as a result they can more efficiently maintain a continuum of commerce. The CARP, as opposed to courts and Commercial Arbitration, has the advantage of expert advice from the Copyright Office, to rely on.

7. The cable and satellite compulsory licenses should be regarded in the same light as the Copyright Act, i.e. in perpetuity, subject to periodic revisions, expansions and, amendments.

LEGISLATIVE PROPOSAL AND/OR AMENDMENTS

There are three areas, in which I will make recommendations for amendments.

Discussion

1. The Copyright Law protects against copyright infringement. However, my own personal experience has been that, that protection is at times too often jeopardized by dismissals from a proceeding in the Copyright Office and the CARP, as a result of motions made by certain monopolies.

Copyright users, file their semi-annual statements, including payment with the Copyright Office, so as not to be liable for copyright infringement. A dismissed entitled copyright owner cannot, sue copyright users for copyright infringement, as long as they have filed their semi-annual statements, including payments, with the Copyright Office. Therefore, a dismissed entitled copyright owner, is in effect, forever deprived of money. This result, seems to counter, the intent of the Constitution, Congress, the Copyright Law and, specifically the compulsory licenses.

The intent of the above three legal instruments, appears to my mind as being, an attempt to guarantee, a copyright owner against copyright infringement in perpetuity, subject to renewals. Per Title 17 U.S.C. § 102.

Specifically, an exemption in the compulsory licenses, have granted monopolies the right to, "lump their claims together and file them jointly." However, on the other side of the coin, the effect, as I have found out from personal experience, is that this exemption does not "protect trade and commerce against unlawful restraints and monopolies," as is the intent of the Act of Congress of July 2, 1890, better know as the Sherman Act as amended. In fact, it encourages "unlawful restraints and monopolies."

The legal manipulations of these monopolies have been, a consistent concert effort to irreparably deprive parties of their entitlements, under the compulsory licenses. By actions of these monopolies, the process of the compulsory licenses reduces itself to, not if you are entitled to monies under the statute, but rather, how to get the monies you are entitled to. This has been my experienced, even when ~~an~~ ^{some of} these monopolies have not presented any legitimate evidence to support their direct case.

2. From my personal experience, the compulsory license monies, distributed by the CRT to at least one of these monopolies, with whom I had an affiliate agreement, was not automatically redistributed to me, even though I proved to it that I was entitlement to royalties for secondary transmission, (distant signal/cable royalties). (see letter to Mr Del Bryant of BMI. Exhibit 2)

Instead I was told by its Senior Vice President that I was entitled to royalties for one local Transmission. I had to Arbitrate in order to be paid. (see AAA Arbitration case No.1314300644/92, James Cannings/Can Can Music vs. Broadcast Music Inc. BMI, and, the same case, Index # 119557/94, Supreme Court of the State of New York County, on file at the Copyright Office.)

Moreover, to the best of my knowledge, BMI has not to date manifested to their affiliates, in any of their brochures any categories, specifically notifying them of their entitlement to monies under the various compulsory licenses.

My point here is, if this company is not forthcoming on a matter pertaining to cable compulsory license which is at present public information, how can it be trusted if this information is no longer public, due to the suggested phasing out of the cable and satellite compulsory licenses?

Proposed Amendment

(1) My proposal therefore is, that all paragraphs of the compulsory licenses which relate to the above anti-trust exemption be amended with the addition to read, "notwithstanding any provisions of the Anti-trust Laws, for the purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them. may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf, provided that the effect of so doing would not be construed, in the mind of a reasonable person, as being the cause of ~~no~~ "protect[ion] of trade and commerce against unlawful restraints and monopolies."

(2) Added to the above provision it is hereby, recommended that any agreement amongst any copyright owner (s), as to a settlement, that is ~~not~~ a proportionate division of the compulsory licensing fees, shall at all times include interest earned on the agreed amount. The interest so earned shall be for the period beginning from the date of the initial investment in the Treasury, by the Register of Copyrights, to the date of payment of the agreed amount, to the other party.

(3) In regard to the issue of the redistribution of compulsory licenses royalties, I do recommend that the compulsory licenses be amendment to make any association or organization, representing persons before the Copyright Office, be made accountable to their members and

affiliates, in this regard, - money distributed from the proceeds of compulsory licenses is subject to Public Law and, is therefore public money.

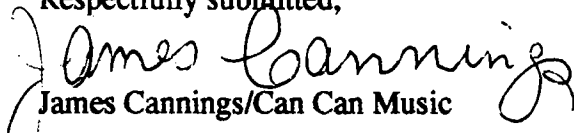
CONCLUSION

The pending revision of the cable and satellite compulsory licenses, has granted to me the opportunity to have all concerned be aware of issues that affect all compulsory licenses. My point of view, is that of an individual copyright owner, who is prosecuting his claims before the Copyright Office and CARP and, who has been a member and affiliate of both ASCAP and BMI. It is hoped that the legislature will take a close look at all facts which are presented herein, as I am presenting these facts, from the perspective of first hand knowledge.

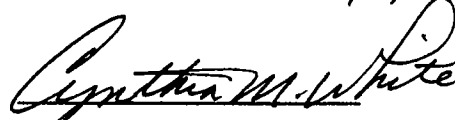
I would stress again, that the cable and satellite compulsory licenses should be regarded in the same light as the Copyright Act, i.e. in perpetuity, subject to periodic revisions, expansions and, amendments.

It is my hope, that the legislative branch of government, would take the necessary steps to guarantee this Constitutional Right and, that it would initiate legislative amendments to all compulsory licenses as per my recommendations. I would be glad to facilitate and, can be consulted should the need arise.

Respectfully submitted,


James Cannings/Can Can Music
Copyright Owner
400 2nd Avenue # 22C
New York, N.Y. 10010
(212)642-8260

Sworn before on *MAY 8, 1997*


Notary Public

~~My Commission Expires September 14, 2000~~

EXHIBIT 1

JAMES CANNINGS
400 2ND AVENUE SUITE 22C
NEW YORK, N.Y. 10010
212 642-8260

APRIL 22, 1992

2027075202

MR HUEY COLE
COPYRIGHT OFFICE LM 613
LIBRARY OF CONGRESS
WASHINGTON, D.C. 20557

DEAR MR COLE:

THANK YOU AGAIN FOR YOUR PATIENCE IN SHARING YOUR EXPERTISE WITH ME.

ENCLOSED PLEASE FIND A COPY OF MUSIC CABLE DISTRIBUTIONS AS DISCUSSED. I WOULD LIKE TO HAVE THE FOLLOWING COPIES OF CANCELLED CHECKS, BACK AND FRONT, PAYED TO BMI INC., BE SENT TO ME AS SOON AS POSSIBLE FOR ALL DISTRIBUTIONS MADE PER ATTACHED SCHEDULE FOR THE YEARS 1985, 1986 AND 1989 RESPECTIVELY.

AS MENTIONED IN OUR TELEPHONE CONVERSATION, I HAVE A JUST CLAIM, AS AN AFFILIATE OF BMI, TO THE REDISTRIBUTION OF THESE ROYALTY PAYMENTS. I HAVE ENCLOSED FOR YOUR CONVENIENCE CORRESPONDENCES TO BMI IN THIS REGARD. TO DATE I HAVE BEEN IGNORED BY BMI.

AS POINTED OUT TO YOU AND I WOULD HOPE THAT YOU WILL FORWARD THE BELOW REQUEST TO THE APPROPRIATE AUTHORITIES, I AM VERY HAPPY THAT THE GOVERNMENT IS INVOLVED IN ENFORCING THE PROTECTION GRANTED TO COPYRIGHT OWNERS AND CLAIMANTS BY THE COPYRIGHT ACT. AS A RESULT OF YOUR INVOLVEMENT WE THE COPYRIGHT OWNERS AND CLAIMANTS HAVE ACCESS TO INFORMATION NEVER BEFORE AFFORDED US BY THE PERFORMANCE RIGHTS ORGANIZATIONS IN AMERICA. AS A RESULT OF THIS ACCESS WE HAVE RECOURSE. AS A RESULT OF THIS RECOURSE, I AM NOW ABLE TO APPROACH BMI WITH FACTS AND FIGURES WHICH ARE ACCURATE, RELIABLE AND IRREFUTABLE.

I AM ALSO OBSERVING A TREND WHERE THESE PERFORMING RIGHTS ORGANIZATIONS ARE TRYING TO GET THE GOVERNMENT OUT OF THE AREA OF ADMINISTERING THE COMPULSORY LICENSES, PER THE COPYRIGHT ACT (TITLE 17 U.S.C), BY AGREEING WITH ALL PARTIES TO NEGOTIATE VOLUNTARILY AND THEREFORE, PRIVATELY. THIS IS EXACTLY WHAT THE PERFORMANCE RIGHT ORGANIZATIONS WANT. THEY DESIRE TO KEEP A BLACKOUT ON INFORMATION. I WOULD HOPE THAT IN BEHALF OF THE COPYRIGHT OWNERS AND CLAIMANTS THAT YOU WOULD REGAIN CONTROL OF THE AMOA IN 1999 AND WOULD MAINTAIN THE SATELLITE CARRIER STATUTORY LICENSE BEYOND DECEMBER 31, 1994.

IT IS A FAMILIAR LINE USED BY THESE ORGANIZATIONS, AND I HAVE BEEN A MEMBER OF TWO, "YOU DO NOT SHOW UP IN OUR SURVEY." THIS STATEMENT MEANS THAT WE ARE NOT ENTITLED TO ANY PAYMENT, EVEN THOUGH OUR MUSIC HAS BEEN USED BY THE MEDIA WHICH HAVE PAYED LICENSING FEES TO THESE PERFORMING RIGHTS ORGANIZATIONS FOR -SUCH USE. WE ARE FORCED TO

ACCEPT THE ABOVE LINE AS THE GOSPEL AND IF THEY DO PAY WE ARE FORCED TO ACCEPT WHAT THEY SAY IS OUR DUE. THESE ORGANIZATIONS OFFER TO THEIR MEMBERS NO INFORMATION OTHER THAN WHAT THEY WANT US TO KNOW.

I WOULD LIKE TO POINT OUT TO YOU THAT IN MOST INFORMATION FURNISHED TO ME BY BOTH THE COPYRIGHT OFFICE AND THE COPYRIGHT ROYALTY TRIBUNAL, BMI, ASCAP AND SESAC ARE ASSIGNED THE DEFINITION OF COPYRIGHT OWNERS. THIS TERM IS ERRONEOUS. OUR CONTRACTS WITH THESE ORGANIZATIONS AS WRITERS AND PUBLISHERS GRANT TO THEM THE RIGHT TO LICENSE OUR PERFORMING RIGHTS AND DOES NOT TRANSFER TO THEM OUR COPYRIGHT OWNERSHIP AS IS SUGGESTED IN SOME OF YOUR INFORMATION.

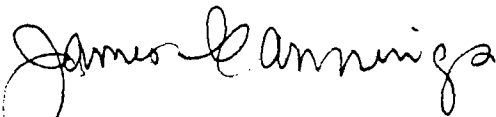
I WOULD HOPE THAT IN THE FUTURE AND HOPEFULLY SOON THAT THE GOVERNMENT WOULD BRING WITHIN ITS JURISDICTION ALL MEDIA, INCLUDING RADIO. THEREFORE, ENFORCING THE PROTECTION OFFERED BY THE COPYRIGHT ACT TO ALL COPYRIGHT OWNERS AND CLAIMANTS. THE LATTER POINT IS DEFINITELY NOT BEING DONE BY THE PERFORMANCE RIGHTS ORGANIZATIONS. THEY ARE OUT FOR THEMSELVES. THEY SELL OUR PERFORMANCE RIGHTS VIA LICENSES, PAY THEMSELVES AND THOSE INVOLVED IN THEIR SCHEME FIRST, THEN PAY SOME BUT NOT ALL OF THEIR MEMBERS/AFFILIATES FOR PERFORMANCES, AND DO NOT PAY OTHER MEMBERS/AFFILIATES EVEN THOUGH THEY ARE ENTITLED TO PAYMENT. I AM A PRIME EXAMPLE, AND, AS IT APPEARS, I WOULD HAVE TO FIGHT TO GET WHAT IS MINE EVEN THOUGH I HAVE MANIFESTED THE FACTS SUPPLIED BY MYSELF AND THE GOVERNMENT TO BMI.

IT IS MY OPINION THAT THIS PARTICULAR CASE OF MINE (AS PER ATTACHMENTS) FALLS WITHIN THE LEGAL DEFINITION OF FRAUDULENT CONCEALMENT, FRAUDULENT CONVERSION AND FRAUDULENT REPRESENTATION. SHOULD THERE BE ANY GOVERNMENTAL ORGANIZATION(S) THAT CAN CONDUCT AN INVESTIGATION INTO THESE PERFORMANCE RIGHTS ORGANIZATIONS., KINDLY FORWARD TO THAT ORGANIZATION(S) THIS LETTER AND ITS ATTACHMENTS AND ASK THEM TO CONSIDER THIS AS A FORMAL COMPLAINT. I WOULD ALSO ASK YOU TO FORWARD TO ME THE NAME OF SUCH AN ORGANIZATION(S) AND ITS CONTACT PERSON TO WHOM THIS MAY BE FORWARDED.

LOOKING FORWARD TO YOUR COOPERATION IN THIS MATTER. KINDLY TREAT THIS REQUEST AS URGENT.

THANKING YOU

SINCERELY



JAMES CANNINGS
COPYRIGHT OWNER/CLAIMANT

EXHIBIT 2

JAMES CANNINGS AND CAN CAN MUSIC
400 2ND AVENUE SUITE 220
NEW YORK, N.Y. 10010
212 642-8260

CERTIFIED - RRR

APRIL 6, 1988

MR DEL BRYANT
SENIOR VICE PRESIDENT
BMI
320 WEST 57TH STREET
NEW YORK, N.Y. 10019

RE: CLAIM TO CABLE ROYALTY FEES FOR
SECONDARY TRANSMISSIONS DURING PERIOD
JANUARY 1, 1985, 1986 and 1989 THROUGH
DECEMBER 31, 1985, 1986, and 1989 RESPECTIVELY
(PURSUANT TO 37 CFR CHAPTER 111, SEC. 302.7

DEAR MR BRYANT:

THIS LETTER IS PURSUANT TO OUR TELEPHONE CONVERSATION. FIRST I WAS VERY SURPRISED THAT, (BASED ON OUR BRIEF DISCUSSION AND YOUR OBVIOUS KNOWLEDGE IN REFERENCE TO THE ABOVE CAPTIONED TOPIC) YOU WOULD CONCLUDE IN A PREVIOUS CONVERSATION THAT MY ENTITLEMENT TO ROYALTIES FOR PERFORMANCES ON THE JOE FRANKLIN SHOW IS LIMITED TO 1 LOCAL PERFORMANCE i.e. \$1.50. I AM ALSO EQUALLY SURPRISED THAT BMI'S BROCHURES ARE STILL SILENT ON 4 OF THE 5 COMPULSORY LICENSES WHICH ARE ON THE BOOKS SINCE 1976 AND 1983 RESPECTIVELY AND THAT, EVERY JULY SINCE 1973 SUBSEQUENT TO THE REVISION OF THE COPYRIGHT ACT OF 1909, BMI HAS BEEN FILING CLAIMS AND COLLECTING MONIES ON BEHALF OF COPYRIGHT OWNERS. I WOULD LIKE TO REMIND YOU THAT "THE GOAL OF THE STATUTORY LICENSE IS TO GUARANTEE THAT COPYRIGHT OWNERS RECEIVE FULL COMPENSATION FOR USE OF THEIR WORKS WITHIN THE SCOPE OF THE LICENSE." (Volume 54 number 125 of the federal register Monday July 3, 1989)

THIS LETTER IS THEREFORE, A LETTER OF ENTITLEMENT TO MONIES COLLECTED BY YOU IN MY BEHALF FROM THE COPYRIGHT ROYALTY TRIBUNAL FOR THE YEARS 1985, 1986 AND 1989 IN THE AMOUNT OF 42% OF \$20,864,272.86, WHICH IS, \$8,762,994.60. THIS MONEY IS DUE AND PAYABLE TO ME IMMEDIATELY, MINUS PREVIOUS PAYMENTS AND ADVANCE. (SEE ATTACHED CLAIMS)

Exhibit 9

IN THE EVENT THAT THERE IS/ARE OTHER AFFILIATE CLAIM (S),
VERIFICATION IN THE FORM OF ONE SHEET AND OR VIDEOS OF
SUCH CLAIMS MUST BE PRESENTED TO ME.

IF YOU DO NOT RESPOND TO THIS REQUEST WITHIN 10 DAYS,
FURTHER ACTION WILL BE TAKEN.

IF YOU HAVE ANY QUESTIONS OR DIFFICULTY COOPERATING WITH
THIS ENTITLEMENT PLEASE CALL ME AT MY PRIVATE NUMBER 212
522-0202 OR LEAVE A MESSAGE AT THE ABOVE 24 HOUR SERVICE.
PLEASE FEEL FREE TO CALL.

JAMES CANNINGS CAN CAN MUSIC

BY:

James Canning

JAMES CANNINGS-COPYRIGHT CLAIMANT & OWNER

DATED: NEW YORK, NEW YORK
APRIL 6, 1992

NOTARY PUBLIC:

BARBARA HIRSCHORN
Commissioner of Deeds
City of New York
Certificate of Appointment
Commission Expires 12/31/93

*Barbara Hirschorn
Commissioner of Deeds*

DATED:

CERTIFICATE

I, JAMES CANNINGS, COPYRIGHT CLAIMANT & OWNER,
DO HEREBY CERTIFY THAT ON 4/6/92, I CAUSED THE
FORGOING CLAIM TO BE DEPOSITED WITH THE U.S. POSTAL
SERVICE IN NEW YORK, N.Y. WITH SUFFICIENT POSTAGE AS
FIRST CLASS MAIL TO BMI, 320 WEST 57TH STREET, N.Y.
N.Y. 10019

James Canning
JAMES CANNINGS