From: [redacted]
To: FN-OMB-IntellectualProperty
Subject: My input on intellectual property rights infringment
Date: Wednesday, March 24, 2010 1:54:47 PM

I have owned a recording studio for 25 years. I am in the business of making "karaoke" type recordings and selling them in stores throughout the country. These are sound-a-like recordings… our own rendition of the songs. I have always acquired copyright licenses (mechanical for the recordings and lyric reprint for the printed words) and paid royalties. I have two issues. One is the illegal use of my recordings by others (i.e. I find my songs for sale on download sites without my authorization and without me receiving compensation). The other is the inadequacy of the Compulsory License Act portion of the copyright law as it applies to my industry.

As I understand it, the Compulsory License Act was enacted so that companies such as my own can record our own rendition of a song and sell it to the public. The publisher or copyright owner of the song cannot stop us from doing this as long as we report to them monthly and pay them a royalty amount which is set by the copyright law. For the most part, publishers who own the copyrights allow for this use by issuing mechanical licenses or allowing an agent such as The Harry Fox Agency to handle the issuing of these licenses. My understanding is that most of the larger publishers do not like the Compulsory License Act because it dictates what they can charge for the use of a song. When I started my business 25 years ago, I sold cassette tapes with printed lyrics included on paper. I used a mechanical license and a reprint license. With new technology, words have been printed on a TV screen rather than on paper. Since printed lyrics are not covered in the Compulsory License provisions, the publishers have taken the opportunity to demand a different license which they call a "synchronization" license. This type of license is not mentioned in the copyright law, as far as I know. I believe it was established through "case law". The publishers sue companies, such as my own, to force the issue of a synchronization license. Because they have more money than most of the companies they sue, they are able to prevail and establish a case law.

The problem with a synchronization license is that it makes it impossible for a company such as mine to continue doing business with the new technology (of words on screen). Mechanical / Compulsory licenses require no up-front fees, no advances, and the rate is set by the law. Synchronization licenses require a "fixing fee" (usually $150 to $300 per song), and advance (up to several hundred dollars or more per song). The licenses are limited to a couple of years, so if the advance isn't used up, you lose it. Karaoke companies generally have thousands of songs. To relicense everything would cost in the millions of dollars. My company gets licenses and pays the fees. But the publishers have made it impossible for us to do business. When your livelihood is taken away because technology has changed, giving publishers the opportunity to take advantage of you, it can be tempting to move ahead without licenses and without paying royalties. For my part, I have chosen to leave the "karaoke" industry. None of my recordings use printed lyrics of any kind, on paper or on screen, because I can't afford the license fees the publishers are demanding with the new technology. By not using the lyrics, I can continue to use mechanical / compulsory licenses. This has caused me to lose most of my customer base and have to start over.

In other parts of the world, it is a different story. MCPS is the publisher's agent for the UK. They

have a very easy and fair and friendly system for getting licenses and paying royalties for karaoke. With MCPS we simply report the songs we want to use and pay a percentage of the sales price. No advances or fixing fees. It is reasonable and doable. They give worldwide rights. However, the publishers block any karaoke imports to the United States using MCPS licenses.

I am aware that, in the theater industry, some publishers are beginning to sue small local theaters and schools in an attempt to make more case law. They seem to want to establish the requirement for an additional license if a school play looks anything like the original Broadway show (in stage blocking – positioning of the actors, etc). This is in addition to the regular licenses to do the show. The directors seem to want a piece of the action, along with the writers of the show and music.

By making their own case laws through lawsuits and then making the fees for licensing unrealistic, I believe the publishers in the United States actually promote the illegal use of their products. Some people may try to use the intellectual property without proper licensing because the licenses are not fair and are out of their reach.

I would like to see the copyright law, particularly the Compulsory License provisions, updated to address new technology. I would like to be able to get reasonable licenses without the fear of being harassed and threatened by publishers who seem to want to find ways around the spirit of the copyright law whenever technology changes.

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