

From: [REDACTED]
To: FN-OMB-IntellectualProperty
Cc: info@copyrightalliance.org
Subject: "The Copyright Alliance has informed me of this welcome invitation from the Obama Administration to share my thoughts on my rights as a creator"
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"The Copyright Alliance has informed me of this welcome invitation from the Obama Administration to share my thoughts on my rights as a creator."

Dear Ms. Espinel, President Obama and the Obama Administration,

Thank you for the opportunity to share my story with you as well as artistic creators around the world.

SAVE OUR ART!!!

I beg your help. Trying to make a living as a musician, I sent one of my songs to one of the largest corporations in the world. It digitally transformed my work into a digital audio video commercial through an illegal, simple and method known as "Temp Tracking" (Temporary Track).

They had one of the largest bands in the world copy both the audio and visuals to be "inspired" and replaced the original audio side...and unfortunately musicologists are helping them commit these copyright violations for profit!

This derivative digital "promo" was created for the most expensive sports advertising campaign ever!!!

I fought back though. Fighting first as a *Pro Se* plaintiff, I am now in The First Circuit Federal Court of Appeals with one attorney against multi-billion dollar corporations.

Because my song was exploited so virally and in so many different media, I firmly believe I'm victim of one of the largest copyright infringements in the history of our country and it is all public record.

The current copyright laws do not protect the little fish (litigation is too expensive when you are fighting monopolies that want to win your content).

Finally, these corporations are using the arcane copyright laws to commit widespread theft of "content" so they don't have to license existing songs because it's simply much cheaper to outright own their audio video. Ironically, these same corporations are going after anyone they can including college students for violating their copyrights. I hope you can help me help us all, and SAVE OUR ART!!!

MY STORY: TRANSFORMATIVE MEDIA INFRINGEMENT

My name is Bart Steele. I am a Multi-instrumentalist, Singer-Songwriter, Performer, Engineer, Producer and Publisher. I also have a digital recording studio where I am well versed in the new methods of editing and altering audio and video. I am also very aware of the current copyright law crisis.

I live and work in Boston, Mass., my hometown, because I cannot make a living as an artist. I am the victim of infringements in the digital internet age whereby a song is transformed digitally into an audio visual medium...or "content" as they call it.

I hope the U.S. Government will update our copyright laws to protect ALL of our citizens against the new types of digital infringements that are nearly impossible to prevent or prosecute against. The line between music, advertising and internet has been blurred. Much of the infringement involves turning songs into audio visual works (one of our Constitutionally protected rights is supposed to protect against this very crime).

My case is simple. I wrote a country playoff anthem about my favorite sports team, The Boston Red Sox, as well as a derivative about any hometown, "Man I Really Love This Team" and "Man I Really Love This Town".

Major League Baseball and many other corporations knowingly and willingly used my song to create a derivative audio visual commercial. I believe paid to have Bon Jovi record new audio for the commercial. They launched the ad campaign "The New Home" in April 2007. In June, Def Jam Records and Bon Jovi released a phonorecord called "I Love This Town" on Lost Highway. In July, they recorded their commercial's visual images of Bon Jovi pretending to play the commercial's soundtrack. They then edit those images into the original audio visual. In August, the same month defendants admitted and publicly apologized for using an illegal temp track create the audio for the movie "300", MLB released this derivative audio visual work, "I Love This Town", on their website. This commercial was shown in movie theaters around the world and released on the internet as a viral video just in time for the playoffs. Bon Jovi's #1 album and tour were supported by the "I Love This Town Contest" in which fans from around the world were asked to create audio visuals using the Bon Jovi "soundtrack" (in their own words) as a temp track to create audio visual "content" they would own. Alvin and the Chipmunks even did a cover. A song that was turned into a derivative audio visual that became an ad and then a viral video was then passed off as a musical work and the infringements have not stopped to this day.

To further avoid liability for their crimes, they hire musicologists to help avoid infringement claims. Thus, when this commercial's soundtrack is released commercially on a CD, the record labels hopefully do not get sued and lose an expensive infringement lawsuit.

MY HOPE: EDUCATION

I do hope in the near future that we can help educate through "aware programs for consumers" (Federal Register Notice Request #20).

However, we also need to educate the corporations that are knowingly breaking the same copyright crimes they are trying to protect against. The corporations and advertisers in this country are clearly hurting "the progression of the arts" by having record companies and artists recreate parts of pre-existing songs in their new so-called art.

TEMP TRACKING=COPYRIGHT INFRINGEMENT

BY LAW, YOU MUST GET A LICENSE FROM THE PUBLISHER FIRST!!!

When corporations use 'temp tracks' without a license FIRST, they are knowingly contributing to and/or violating the right to copy, reproduce, synch to video, as well as the right to prepare derivative works.

The hypocritical record companies that are going after free MP3 downloaders are knowingly accepting large sums of money to commit similar copyright crimes via "temp tracking". However it is all the more insidious because they are doing it for commercial reasons and attempting to evade the very copyright laws that they want enforced.

They first reproduce and copy the song in their audio visual digital software program (clearly violating copyright laws). They then synch visual images in "timed relation" to the song violating synch rights next. The digital audio visual they create is clearly also a derivative of the original song in a new medium.

When advertisers make these commercials, they usually edit their video images to pre-existing music to save time and money. If they do not own the copyrights or license to use music, in many cases, they re-edit the video images with different music. For example, they keep the verses of the original temp track's verse from "America The Beautiful" and add the chorus from "Lean On Me" and the Bridge from "Twist and Shout".

They then have the artists compose new audio while observing this derivative audio visual.

MUSICOLOGISTS WORK FOR THE RECORD LABELS AND ADVERTISERS

They use multiple "temp tracks" at the advice of certain musicologists because you are less likely to get caught. They are admittedly paid by the record companies to advise on the danger of liability in case any of the copyright holders attempt to enforce any of their Constitutionally protected rights. Many of the experts that our courts rely on are advising corporations for money to violate more artists' copyrights

because you're less likely to get sued

If, as in the example above, the artist copies multiple parts of different songs as well as video cues (they are also violating derivative rights of "America The Beautiful", "Lean On Me" and "Twist and Shout")...not to mention that the right to copy and reproduce have already been violated.

Basically, these musicologists are accepting money to help the record companies and their clients violate both the artists' and publishers' copyrights, and then defend them if they do get caught.

There is no logic or legality in advising a corporation or company to violate a creators' copyrights as much as you can to hide your crimes. These musicologists are knowingly contributing to copyright infringement and clearly also using the arcane musical copyright laws to profit. They are clearly hurting the advancement of the arts.

RECORD COMPANIES

The record companies are having their artists 'brand' with corporations. The corporations pay the recording studio/artist to record digital audio soundtracks for corporations' audio visual commercials. The record company agrees because there is no 'work for hire' relationship.

The problem with this is that they are accepting money so that the corporations (who use temp tracks to illegally create an audio visual) get to own its copyright {and other peoples' content}. The record labels in many cases change the audio and put it on an album to make even more money and are paying musicologist to help them avoid lawsuits.

In their own pursuit of justice, the record companies want ISP's to give digital info of alleged infringers.

All we creators ask in helping to prevent "digital temp tracking", is immediate e-discovery info of alleged infringers. Furthermore, if people recognize a work of art in a different media as well as others (as in my case), then they should be allowed their Constitutionally protected right to a jury.

WHY BOTH ART AND ARTISTS ARE THREATENED!!!

My Constitutionally protected intellect property rights are very important to me because they are meant for the progression (not stagnation) of the arts. If everybody copies other people then nothing would be new. If everybody took art for free, then an artists cannot make enough money to live (or have time for their art).

If our Forefathers copied others' buildings, there would be no Twin Towers. If people

kept on reinventing the acoustic guitar, there would be no Jimi Hendrix.

You are not allowed to reproduce or copy. You are not allowed to synch music with video if you do not own the rights first. Corporations, however, usually violate these rules first before deciding if they want to pay for the licensing. This has become standard operating procedure in the creation of advertisements, and only the US Government and/or our justice system can help at this point.

"TEMP TRACKING HAS BECOME AN ACCEPTED PRACTICE BECAUSE IT IS BEHIND CLOSED DOORS", and most importantly it is done to save money. Basically, it makes movie and ad making cheaper.

The inspiration and templates they provide are derivatives of others and this is a clear violation of the laws that our Constitution stated would be illegal: "the progression of the arts" not "reproduction of the arts".

Just because they are now presenting several parts of several pre-existing songs (to avoid a lawsuit), it is still just creating a digital 'mash-up' of what already existed.

WHY ARE THEY TEMP TRACKING?

The advertisers and corporations are doing this because it is much cheaper to own their content (pay the record company to help create a 'soundtrack' for an audio visual). It is much more expensive than pay a publisher for any of the several rights (reproduction/synch/derivatives...etc). Ironically the publishers that in the days of old that used to make more than the record companies are making less now.

Artists and record labels are now accepting money to include corporations slogans and jingles as part of music, lyrics, as well as the audio visuals that the companies and advertisers pay for...and the artist usually puts it on an album not disclosing that it was a soundtrack paid by a corporation.

Except in cases where there is huge public backlash when they do find out (Google: Wrigley Gum, Chris Brown).

CORPORATE AMERICA IS CREATING DIGITAL AUDIO VISUAL MASHUPS

This practice of digitally recycling pre-existing audio and video is creating digital audio visual mashups. They are violating the right to copy and the right of reproduction if they have not licensed the copyrighted work. They are clearly also violating synch rights and derivative rights among others.

They are also committing unfair business practices making it nearly impossible for a small artist, publisher, and record label (like myself) to compete with the corporate

influenced artistic development decisions of the big labels.

In a sense, corporate America is negatively influencing what is popular in American culture. They have already admittedly blurred the line between entertainment/advertising/internet because they have to compete with technologies like Tivo. When consumers are unaware that they are being pitched a product within the lyrics, music and videos, we, as a society...have crossed a dangerous line.

Imagine if the Mona Lisa had a McDonald's "M" subtly painted in similar colors in the background, would cubism ever evolve centuries later?

PERFORMANCE RIGHTS ORGANIZATIONS

The artists' rights organizations don't care. ASCAP, who has already frozen royalties on the MLB/Bon Jovi audio, have done nothing to help me. After looking at my case carefully, they said, "We find it hard to believe this was independent creation on their (Bon Jovi's) part with the whole baseball and video thing" and I'd be "more depressed to know how much this sort of thing happens in the music and advertising business". They have done nothing to help me so they can keep the royalties flowing in, acting more like a 'for profit' organization.

When I called them to verify those statements for the court, a lawyer of theirs told me one of the employees "was no longer with ASCAP" and the other has "no recollection of that conversation". In truth, they just want to collect their percentage of royalties for themselves and the huge publishers (and certain BIG artists they represent). It also could be because several of the defendants in my case are on their Board of Directors.

Since ASCAP no longer licenses or enforces our synch rights, where is their motivation to help the independent artist like me against their cash cows (especially when they no longer control a 'monopoly' on synch fees/licensing).

Look at what that has led to in the past 18 years: corporations realizing you can synch video to music creating derivative works and deciding whether to license or rip off the song later.

CURRENT STATE OF THE ARTIST

It has never been harder to make a living as an artist and it has never been harder to enforce your copyrights when the violators are attempting to digitally hide their crimes. The small artists has virtually no chance without corporate financing these days. Music is becoming corporate content and nothing more.

Please act now and help to protect creators "content" (not just the record companies that exploit and profit from these very creators).

The reason why copyright infringement cases are so common in music these days usually is because of "temp tracking". Rather than managing this risk with much insurance/using multiple temp tracks to avoid litigation/indemnification agreements if they caught, etc., corporations that violate copyrights should be held accountable for willful criminal copyright infringement...as well as educated as to when they also infringe with a digital click.

With "Temp Tracking", the moment you press the first button, you have committed a copyright crime and also began creating a derivative of something pre-existing (both the audio and video) violating several copyright laws in the process.

Is this what our Forefathers meant by "progression of the arts and sciences"???

Best Regards,

Bart Steele

Musician/Artist/Creator/Copyright Infringement Victim &Property Manager

March 24, 2010

for more specific information about my case, Ken Dubrowski (who wrote you as well) has a good summary at his blog:
<http://kendubrowski.blogspot.com/>