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COPYRIGHT CLAIMS BOARD

MICHELLE SHOCKED, *Claimant,* *vs.* **GAVIN McINNES,** *Respondent.*	Docket No. 22-CCB-0263 **RESPONDENT'S PARTY STATEMENT**

GAVIN McINNES, of full age, certifies under penalty and says as follows:

1. I am the Respondent in this action and make this submission in response to the evidentiary submissions of the Claimant in support of her claim of infringement of the sound recording of her copyrighted work "Anchorage" (the "Work").

2. The Claimant' is correct in stating that, as she does in her Opening Party Statement ("OPS"), that I believe any use of the Work by me was permitted as a fair use under the Copyright Act and the First Amendment. This has been my belief at all times.

3. "Synchronization," in the context of copyrighted music, refers to using music as a soundtrack or "background" to the simultaneous onscreen or other visual display or media output such as in film, television shows, advertisements, video games, accompanying website music or movie trailers.

4. I acknowledged in the defenses set forth in my Response in this action dated June 14, 2023 that I did play an excerpt of the Work in an introduction to a segment of my program during which I commented on Claimant's career, her contribution to the punk music era, and the message conveyed by the Work itself in that context. I also noted that the segment was no longer accessible to the public.

5. My use of Claimant's Work constituted less than the whole of the Work, which was played in the background while participants in the program, including myself, were speaking. I describe this below.

6. My use of the Work was made in the course of reporting, criticizing, and commenting on it and on the career of Claimant, as set forth in detail below.

7. The episode of my "Get Off My Lawn" program on which the Work was played began, as they all do, with the sound of a police siren and a gunshot.

8. These were followed, at 0:03 (three seconds) into the episode, by the playback of the Work.

9. At 0:12, an unseen announcer began speaking over the music, saying, "Li-i-i-ive from New York, it's Get Off My Lawn with Gavin McInnes!" This introduction ended after 21 seconds into the episode.

10. After the announcer finished speaking, the Work continued playing for 30 seconds with no commentary, dialogue or other speaking, while I carried a prop "boom box" portable cassette player which I pretended to be listening to as the source of the music while I walked onto the set and to the desk from which I conduct the program.

11. Seated at my desk on the set, at 0:51, I semi-sang the words, "wild then" along with the Claimant's singing in the work.

12. While the music continued playing, the following dialogue took place. Unless otherwise stated, the quoted comments were made by me:

> "Love the keyboards!"
> "Texas always seemed so big but you know you're in the largest state in the Union when you're anchored down in Anchorage [sung over the same words being sung] Alaska"

"Song makes me cry…. Can you go forward in it?"

13. When I asked, "Can you forward in it," I was asking my producer whether he could fast-forward the music to a later part of the song I wanted to talk about. He responded, at 1:25 into the episode, "It doesn't look like there's, like, a player."

14. Beginning at 1:27, while intently watching my producer try to figure out if there was any way to fast-forward the song as it streamed, I adjusted my tie, pantomimed playing the violin and "vamped," or played for time, until I said, at 1:38 into the episode, "Huh. Anyway, you get the idea."

15. To be clear, the music ended at the 1:38 point.

16. I then quickly "shut off" the boom box while my producer switched off the music from the production audio feed – giving the impression that I had, myself, shut off the music – and said, "Great jam," and then described the later part of the song I had hoped we could fast-forward to, saying, "She goes, 'What's it like to live in' – it's a letter, going back and forth. Why am I getting teary-eyed?"

17. My producer then asked, "What does that song remind you of?" I responded, quoting the lyrics of the Work, "What's it like to be in New York City? New York City, imagine that! What's it like to be a skateboard punk rocker? Leroy says to send a picture. Leroy says, hello, friends keep in touch… I'm very menopausal."

18. I then made some unrelated comments about the onset of a feeling that I was turning into "Matt Foley," an obese self-help guru character who lives "in a van down by the river" played by the late Chris Farley on Saturday Night Live, I came back to my commentary about the song and the cultural moment it represented at 3:21 into the episode.

19. "That song is gone," I said, "It's a beautiful song. She was kind of punk, that chick – Michelle Shocked. I remember she would hang out with [the punk band] MDC back in the day." I then talked briefly about Claimant's background and career and how she had been, to use the modern terminology, "cancelled" because of certain impolitic statements in opposition to same-sex marriage.

20. I then continued, "Try to find that song. I got it off her website, MichelleShocked.com, which strangely – yeah, look, you Google [*sic*] her on Apple Music and you get Billy Bragg. Nowhere on YouTube. You might find a, uh, a live version of it, but that – with the beautiful keyboards and all that? It's gone! It's not on Daily Motion, it's not on fucking Rumble, it's not on, what's it called? Bumble, brumble? [*Producer*: "Rumble."] It's not on Vimeo. She's been deleted. From the world."

21. After some trivial small talk concerning a person my producer and Claimant appear to have known in common, I returned again to the subject of Claimant's having been "cancelled," and presented a brief excerpt of an interview of Claimant by the television personality Piers Morgan, who appears on screen, in the interview, over a chyron reading, "'I ADMIT I MADE A MISTAKE' / Shocked made controversial remarks on same-sex marriage."

22. I then continued, "So she had an album called, 'Short Sharp Shocked' – it's an old British expression, and I think Thatcher said it once about rioters, but it goes way back to the 1800's – it's about punishment – the best punishment, the assailant needs a short, sharp shock. . ." I then described the cover of that album of Claimant's, the cover of which shows a photograph of her being restrained by police at a demonstration in the 1980's.

23. I then observed that, four years earlier, a punk rock group called Chaos UK had issued an album called, "Short Sharp Shock" and depicting a very similar picture, although the

person being restrained was not Claimant. I suggested that, given her likely familiarity with punk music, her own album must have been an homage to the one by Chaos UK.

24. I then said, "So I pointed this out on Twitter – many years ago, like ten years ago, right before the gay shit hit the fan." I then described what I considered to be an extreme and – especially considering that I had only suggested that her album cover was an homage, not a "rip-off" of the one from Chaos UK – very unreasonable reaction to my tweets. Her response included groundless accusations that I was following her – not on Twitter, but in real life – and trying to harm her.

25. I added, "I can't show you [the tweets] because my tweets have all vanished."

26. My tweets were deleted from Twitter by Twitter after it banned me from the platform, without warning, explanation or justification, as part of a comprehensive "cancellation" of my content and person from virtually every media and social media platform. To my viewers, the connection between my experience and that of Claimant would have been obvious.

27. I then said, "Apparently, she's psychotic about copyright. She might come at me for opening up with 'Anchorage'! But lawyers, I'd like you to know that this is an editorial choice. We're not using it to illustrate or further promote our product, we're using it in an editorial fashion to discuss – and we're still discussing it now, five minutes into the show."

28. I then explained that the whole subject had come up because of a book I had read about a brilliant New York City detective active in the 1970's, and how I had subsequently encountered a photograph of that detective, Albert Seedman, employing a chokehold on a suspect who was later convicted of murdering two policemen. That photo made me remember the correlation between the album covers I referred to above, and – as someone who has been "cancelled" and deplatformed himself – I concluded that the story of how Claimant, who was

once associated with the counterculture, had been so effectively erased from the public sphere for offending a powerful political group, was an appropriate subject for my program.

29. The program moved on to other subjects, many of which included "cancel culture" subjects, after 15 minutes.

30. In sum, while Claimant admits that only one minute and 38 seconds of her three-minute and twenty-four second Work was played on "Get Off My Lawn," she fails to acknowledge that no part of the Work was played for longer than 30 seconds without dialogue being spoken over it. This use cannot possibly have harmed the market value of the Work, despite Claimant's insistence to the contrary in her OPS.

31. Regarding Claimant's statement that she previously entered into a license to her "work" – she does not say if it is the same work as the Work that is the subject matter of this proceeding – for $20,000, I cannot respond because I do not know anything about that license, such as the date, the identity of the licensor or the specific nature of the use.

32. In fact, if anything my use of the Work can only have enhanced its market value, because, as I explained on the program – and I now state under penalty of perjury – it is nearly impossible to obtain a recording of this song, and it is even less likely that those not already familiar with it will ever know of its existence. In addition to exposing my viewers to the song, I praised it highly and repeatedly, urged my viewers to obtain and listen to the whole thing themselves, and then told them where to go to find it, i.e., Claimant's own website.

33. Finally, I have set out facts demonstrating that the Work was utilized, not to enhance the production by providing musical accompaniment or set a mood for unrelated content, but as an editorial device that enabled me to effectively and powerfully praise the Work and, by implication, Claimant herself while contrasting her creative, publicly-engaged past with

her censored and culturally excommunicated present. This is a subject perfectly suited to my program's themes and my own experience and persona.

34. The statements in Claimant's OPS and her Witness Statement by me which she describes as "defamation" are corroborated by the excerpts from the Pierce Morgan interview described above and placed into evidence by Claimant, and could readily be supplemented by additional evidence. But defamation is not relevant to Claimant's copyright infringement claim.

35. The description in Claimant's Witness Statement of her correspondence with one Dan Ka†øsner includes third-party statements characterizing me as a "mean clown" and an "extremist." This is false. I am not an extremist.

36. Claimant's other testimony does not appear to raise any issues relevant to her copyright infringement claim because I have not denied using part of the Work on my program.

37. Nor does Claimant's Witness Statement bear on my fair use defense, except that ¶ 1, if considered by the Board, would tend to confirm that Claimant has been "nuked" and effectively eliminated from the Internet – as I said on my program – and that her correspondent Sean Keane told her that he would never have heard of her "recently" if not for my mentioning her on Get Off My Lawn and playing part of the Work.

38. The Witness Statement of Dan Kusner, also filed by Claimant, also does not appear to raise any other factual issues requiring a response from me.

I certify that the foregoing is true and correct subject to penalty of perjury.



GAVIN McINNES

Dated: January 4, 2024

Proof of Delivery

I hereby certify that on Thursday, January 04, 2024, I provided a true and correct copy of the Respondent's Certified Party Statement to the following:

Michelle Shocked, represented by Michelle Shocked, served via ESERVICE at account@michelleshocked.com

Signed: /s/ Ronald D Coleman