Electronically Filed
Docket: 23-CCB-0024
Filing Date: 04/01/2024 03:31:44 PM EDT

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COPYRIGHT CLAIMS BOARD

MICHELLE SHOCKED, Claimant, vs. LAW ROCKS, Respondent	Case No.: 23-CCB-0024 POSITION STATEMENT OF MICHELLE SHOCKED

I. POSITION SUMMARY

1. Neither I, nor any person acting as authorized representative, consented to any audiovisual recording of my performance at the Law Rocks fundraiser event.

2. My performance included five different songs that are my copyrighted works.

3. The unauthorized recording of each song performed is therefore a different count of copyright infringement.

4. Law Rocks overlooks the law: the Second Circuit Court of Appeals has ruled that audiovisual recordings are not subject to compulsory license.

5. The creation of, and further distribution of, the audiovisual recording of my performance is copyright infringement because there is no basis to conclude that there was a synchronization license for those works.

6. Law Rocks' gratuitous attacks on my career, advocacy and the fact that the Law Rocks is a bunch of lawyers gives them some level of deference is irrelevant to a determination of copyright infringement or damages.

7. Law Rocks contradicts itself when it states that the broadcast of an audiovisual signal is not subject to

copyright—thus arguing that I have no "valid claim", yet submits a witness statement that admits that they "videotaped" the performance.

8. There is no evidence at all that the "application" was presented as any kind of contract between the performer and the Law Rocks organization or even meets the requirements to a binding contract that provided "consent.".

9. I am willing to settle for damages of $3951.34

II. FACTS

1. I performed at a Law Rocks fundraiser on October 20, 2022, as a favor, to one of the board members of FFS Project.

2. That board member was Drew Kastner. FFS Project had been formed a few months prior by Mr. Kastner's law firm, Schnader Harrison. The activities of FFS Project, focused on the widespread exploitation and abuse of artists rights, by fraudulent first sale "resale" on online third party marketplaces, is evidenced by my very first claim at the CCB, Shocked v Billington. Mr. Kastner is an avid guitar collector, and his motivation was to obtain high quality photographs of himself performing onstage with me to present a favorable impression to a guitar manufacturer he wished to obtain an artist discount for a guitar he desired.

3. The group that was assembled to perform included legal professionals who are members of the Copyright Society's "supergroup," "Crude, Humble & Obvious," as well as Mr. Kastner.

4. The application to perform at Law Rocks as "Michelle Shocked featuring Crude, Humble & Obvious" was submitted online by the administrative assistant to Drew Kastner, Joan Campanara. It was originally drafted for the Law Rocks DC event, but due to a scheduling conflict, was repurposed by her for the Law Rocks NYC event. This is not a conspiracy theory, merely a statement of fact.

5. Joan Campanara was acting on her own. In a lengthy phone conversation I provided information while Ms. Campanara took notes that provided the details for the application she completed. She provided my publicly email address contact@michelleshocked.com in the application, furthermore, it is not the address used for correspondence in this matter.

6. I had no part in reviewing this application, nor was I consulted as to the contents of the application. I

completed the band profile information at a later time. The application includes no “notification of videotaping of performances.”

7. Drew Kastner is not my attorney, and was not acting as my attorney in regard to Law Rocks, nor acting in any capacity as my agent.

8. I never gave any authorization to anyone involved in the Law Rocks event to act on my behalf with regard to consents or permissions regarding my copyrighted works.

9. An email was sent by Law Rocks to Mr. Kastner on August 18, 2022 which emphasized that a fundraising minimum of $5,000 was expected, and performers that do not meet the minimum in tickets and sponsorships will be ineligible to win awards, and will have five minutes docked from their set time, and may not be accepted to play in future years.

10. A decision, not to compete in the “battle of the bands,” but instead, to perform at the event without competing, was communicated to Law Rocks in a phone call by Mr. Kastner on August 25, 2022.

11. It was also at this time that Mr. Kastner withdrew from the performance lineup, due to an assignment from his law firm.

12. On the morning of the event, on October 20, 2022, an email was sent by Law Rocks, as follows,

> *“Wanted to touch base on two things. First, I know fundraising didn't go quite as anticipated – it can be tricky. As you probably recall, bands that don’t reach the minimum do have five minutes deducted from their play time for a 20 minute set. This is awkward, but we do have to be fair and consistent with the rule so unless you know of a bunch of funds coming in prior to the show I'm afraid we will have to follow that guideline.”*

13. I confirmed an hour later by email that we would perform, but that I would remove my work “Anchorage” from my planned set list, as follows,

> *“I appreciate the egalitarian spirit of Law Rocks and will abide by this decision. I will cut Anchorage from my set tonight.”*

14. Five minutes before the performance, two Law Rocks principals, Omi Crawford and Amy Rupnow, approached our group, accompanied by a man, unknown to me, who they explained was a ‘big fan’ of my work, who offered to pay the balance of the minimum fundraising amount required, in order that my performance would qualify under the fundraising rule, so that there would be time to perform my copyrighted work, “Anchorage.” Ms. Crawford later explained by email that this person, unknown to me, is a board member of Law Rocks. See Item 7 of the discovery documents.

15. The entire group was witness to this discussion. In her witness statement, Ms. Crawford fraudulently

claims she was simply “bending the rules,” but the terms were presented to the group quite differently; as a donation offered by the unknown person present, in order to meet the conditions for an additional fifth song to be included in our set. “Bending the rules” is not a defense to copyright infringement.

16. Before the performance of my song “Anchorage,” I asked the audience to refrain from recording my performance without my consent, insisting that “what happens at Law Rocks stays at Law Rocks, and noting that “in a room full of lawyers, they should know better.”

17. At no time did I ever consent to my performance being recorded, either by audio or audio-visual means. At no point during the performance did I witness any evidence that filming, or videography, was taking place; no cameramen, no additional crew, no additional lighting, no boom stand mics, gaff rigs or camera dollies, and most significantly, no signed performer release forms.

18. Respondent is an organization of intellectual property lawyers active in the entertainment industry.

19. Respondent’s members are well acquainted with the requirement for signed documents that establish rights and permissions of use for copyrighted works and the distinction between compulsory licenses under §115 and synchronization licenses.

20. Despite repeated claims made without proof of signature offered as evidence, Respondent has failed to produce any kind of contract, license, consent, waiver or any other document signed by me.

21. This failure to produce an executed copy of a contract is itself evidence of a lack of license.

22. Respondent has submitted as evidence of consent a consent form, but it lacks my signature.

23. Respondent has not provided any evidence that I signed such a document, or was presented a document and verbally approved it, or any other evidence that I agreed to the terms of that form.

24. On October 21, 2022 I received an email from Law Rocks informing me that an audiovisual recording of my performance had been made.

25. This constituted an unauthorized fixation of my copyrighted works, including “Anchorage.”

26. I discovered the infringing activities of Law Rocks, only by email, following the performance.

27. I immediately responded by email to Law Rocks with questions about the unlicensed use of my musical works and unauthorized audiovisual recording of my performance. After an initial assurance that my concerns would be addressed, Law Rocks then ignored my repeated inquiries, and then maliciously mischaracterizes my patience and persistence as “threats” and “harassment.” I have provided evidence

that no such objectionable behavior took place. See Item 7 of the discovery documents.

28. Chuck claims in 25 separate statements that I consented to the recording, without offering any further evidence beyond the statement that the application materials submitted by Ms. Campanara noted that "the concert will be professionally filmed; the digital files will be sent to all participants."

29. As noted above, I did not submit the "application materials" nor did I authorize any party on my behalf to make any statement, provide any consent, nor offer any rights in my copyrighted works in connection with the Law Rocks fundraiser.

30. The law of webpage contract makes clear that if the webpage has tiny text, designed to be obscured, in order to sneak it by the reader, it is not enforceable.

31. At no time prior to the performance did a "professional filmmaker" request, or obtain, signed consent forms from us, the performers; signed consent being both necessary and standard professional conduct.

32. Chuck repeatedly lies by asserting that Mr. Kastner had a role as "my counsel" in 15 separate statements, and characterized my requests for a response from Law Rocks to address my concerns about the unauthorized recording as "improper threats." I have the utmost respect for legal professionals upholding ethical standards in the conduct of their profession. My contempt is reserved for professional liars. I have documented over 120 such character attacks. See Item 8 of the discovery documents.

33. Chuck is aware that Mr. Kastner was not acting as my counsel and has offered no evidence that he was, and confirms in his descriptions of Mr. Kastner's conduct that his representations were made in concern for his own liability, including his demand for destroying the evidence.

34. Chuck offers 15 statements alleging that "a recording of a live performance does not give rise to a copyright claim," citing case law from Flo & Eddie, Inc v Bill Graham Archives LLC and a further 16 based on his misapprehension of the anti-bootlegging statutes in United States v. Moghadam.

35. Chuck attempts to confuse the Board: a "recording" does not include "audiovisual recording".

36. The Second Circuit Court of Appeals has ruled that an unauthorized audiovisual fixation of a performance of a copyrighted work is not subject to compulsory license under §115. ABKO MUSIC v SAGAN [citation omitted] (2d Cir 2021)

> *("Guided by the plain language of the exclusionary phrase [in §115], we conclude that audiovisual recordings are not covered by Section 115 compulsory licenses. Defendants therefore infringed each musical work included in an audiovisual recording.") pg. 18.*

37. At no time did Law Rocks request or obtain a synchronization license for any of my copyrighted works that were in the unauthorized audiovisual recording.

38. Respondent's offer to distribute the sound recording does not cleanse a copyright violation.

39. There are grounds to find the actions of Law Rocks willful. Chuck has attempted to mischaracterize my struggle against the abuse of artists' rights, particularly bootlegging, as stunts to generate publicity. Unfortunately, as bootlegging is rampant and widespread, it is unnecessary to create conditions for stealing copyrights, but often whistleblower activists discover a very high price is exacted for their efforts to expose this pernicious form of artist exploitation.

40. I found a stream-ripping video posted on Law Rocks videographer Chris Carden's professional channel, "Csquared Media," titled "YouTube to MP3. https://youtu.be/i8UEAyH9GJU posted on Aug 19, 2015, with the description, "This video shows how to make MP3's from YouTube videos."

41. Chris Carden's blithe suggestion that an unauthorized MP3 can be "ripped" from an unauthorized audiovisual recording belies any notion that the MP3 renditions of my performance at Law Rocks are anything other than further copyright infringement.

42. Respondent claims the work has been 'destroyed,' but provided no evidence of such, and I am aware of vaulted recordings being distributed decades after the unlicensed reproduction right was infringed.

43. On information and belief, Law Rocks refuses to turn over the recording, claiming they destroyed it, due to the statements I made from the stage during the performance which provides clear evidence of their willful copyright infringement that evening, and they seek to mitigate their liability through a deliberate misdirection, claiming a concern for concealing the videographer/s and / or audio engineer/s identity. Although Ms. Crawford claims that she "received confirmation in writing that [any and all video recordings of [my] performance [was] discarded and destroyed," I have been provided no evidence of this.

44. Law Rocks apparently believes that they are entitled to create derivative works from my unlicensed musical works and unauthorized audiovisual recording of my performance without my permission. On the one hand they attempt to claim that "due consideration" was provided by offering the venue, technical support including amplifiers, microphones, monitors, speakers and other equipment, as if this "consideration" was for the purpose of videography rather than a live performance; and then, on the other

hand, in direct contradiction of that claim, refuse to provide the “due consideration” offered, “the concert will be professionally filmed; the digital files will be sent to all participants.” On the one hand they wish to assert, “This consideration renders the license irrevocable,” and on the other hand, refuse to provide the “consideration.”

45. Law Rocks’ claim that I consented to the recording by the “application” webpage is contradicted by the legal principle that “Reasonably conspicuous notice of the existence of contract terms and unambiguous manifestation of assent to those terms by consumers are essential if electronic bargaining is to have integrity and credibility.” Specht v. Netscape Communications Corp., 306 F. 3d 17 - Court of Appeals, 2nd Circuit 2002. pg. 35. "As a general principle, at common law[,] an acceptance [of a contract], in order to be effective, must be positive and unambiguous." 2 Williston on Contracts § 6:10 (4th ed.)(cited by Berkson v. GOGO LLC, 97 F. Supp. 3d 359 - Dist. Court, ED New York 2015. pg. 388, case further noting that state law would apply, in this case New York State because the performance was in New York.)

46. There is no evidence at all that the “application” was presented as any kind of contract between the performer and the Law Rocks organization, or even meets the requirements to a binding contract that provided “consent”.

47. The “application” is presented on the website as a series of information requests, which do not purport to be any kind of contract. The “application” is simply presented as “guidelines” with the page constituting the purported consent titled, “Please check out these important additional details about playing the event.”

48. The “application” states that: ”All band entries are subject to approval by Law Rocks” thereby making it clear there is no contract formation as a result of filling out an application.

III. DAMAGES SOUGHT

1. I received a check from Law Rocks on November 28, 2022 payable to FFS Project in the amount of $1048.66, which was well short of the $5000 amount that had been raised.

2. Law Rocks owes a balance of $3951.34.

4. The matter at hand is a good faith belief that my copyright protected works were infringed and I am offering to resolve the matter for $3951.34, or the return of the unauthorized and unlicensed audiovisual recording.

Dated this day, April 1, 2024

MICHELLE SHOCKED

Proof of Delivery

I hereby certify that on Monday, April 01, 2024, I provided a true and correct copy of the #21 23-CCB-0024 LRX Amended Position Statement of Michelle Shocked to the following:

Law Rocks, represented by Charles D. Jarrell, served via ESERVICE at cjarrell@allenmatkins.com

Signed: /s/ Michelle Shocked