

Honorable Alison J. Nathan  
Courtroom 906  
United States District Court for the  
Southern District of New York,  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Wednesday, September 20, 2017

Dear Honorable Alison J. Nathan,

According to the website [www.SpotifyPublishingSettlement.com](http://www.SpotifyPublishingSettlement.com), the fairness of *Ferrick v. Spotify USA Inc.* is due to be heard/decided by you on December 1, 2017.

This letter will establish that the proposed settlement is **injurious** to music content creators, is **unfair** on its face, and will set a legal precedent for **further destruction of copyright protections** for all content creators whether in music, books, art, etc.

As a songwriter and publisher, I have chosen never to release music through any digital aggregator or digital distributor. The two songs I have registered as a copyright owner have never been released publicly by me or my co-writer. The reasons for this decision are:

1. Digital aggregators/distributors are notorious for remastering and assigning their own ISRC.
2. Digital aggregators/distributors are sloppy in their recordkeeping and often assign the same ISRC to five or more musical works by different artists.
3. Digital aggregators/distributors claim co-publisher ownership status with songwriters when registering the work with ASCAP, BMI, or SESAC (Performing Rights Organizations, or PROs).
  - a. This goes against their own Terms of Service but has not stopped them.
  - b. The PROs know of this practice and do not speak up to the digital aggregators/distributors, thus allowing the money flow to be even murkier.

Since I have never employed the services of a digital aggregator/distributor, and the only way to get onto Spotify is to have uploaded a digital file to a service of this sort for distribution to such an outlet, you can see that when I received two postcards in the mail telling me of the above referenced lawsuit I was not sure why I was included.

This lawsuit looks good on its face, but when one has a deeper understanding of the forces at play and the end goals of those forces, then one is obliged to look deeper. This is what I did and I quickly became concerned.

Having received many class action notices in my lifetime, they've always had two options: (1) Do nothing and include yourself or (2) let them know if you want to be excluded. Easy and clear.

*Ferrick v. Spotify USA Inc.* has three weasel-word options, each couched in such a way that no matter what happens, Spotify USA Inc. will have nothing more to pay to content creators than the \$43.45 million.

Option One: Include yourself by filling out the claim form and give up all future rights to sue Spotify for infringement. *This means they can use the same song again and owe nothing to the owners.*

Option Two: Exclude yourself by telling them every song for which you have filed a copyright registration.

Option Three: Do nothing and you still give up all future rights to sue for infringement. *This speaks for itself.*

What is clear is that...

**...this settlement seeks to represent all holders of copyrights of music whether or not that music has ever been released.**

Spotify is aiming to pay in advance for any copyright infringement of songs they may use in the future, thus the three options above. This settlement is attempting to set up Spotify with a "get out of copyright jail free" option.

That is, Spotify will never have to pay any fines required by the copyright laws because they will have set up this fund to settle — at mere fractions of a penny on the dollar — for stealing rightfully owned intellectual property from content creators, *many of whom have chosen never to do business with Spotify in the first place* and who are being asked now to give up rights to any future action when Spotify steals their songs again.

I asked the Settlement Administrator where Spotify got their information so they would know where to send the postcards. The Administrator said they got it all from Copyright.gov.

Why are all copyright holders of songs — *including those with songs that have not been released for distribution or sale* — receiving demands to include or exclude themselves in this Spotify lawsuit? There is a more solid technique that will protect content creators without having to blanket the entire U.S. with predatory and burdensome demands.

Simply require Spotify to make *their entire playlist* available online. It should minimally include the following information they have about any song, namely:

Song title; publisher (if known); artist (if known); writers (if known).

Then let everybody who has put songs out for the public go check the website and claim their song by then providing proof by which they can then include themselves in the lawsuit settlement.

Of course, this solution assumes Spotify has only been getting songs for their playlist through digital aggregators, direct license from administrators of large catalogs, publishers, and labels. If Spotify is getting music through illegal means, then this lawsuit is even more evil. In fact, given how this lawsuit is worded, I am inclined to think it, thus the blanket demands mitigating future fines.

However, contrary to popular opinion and Google/Alphabet's newest scheme to the contrary, copyright registration of and by itself is not required to own your own content nor is it proof of an ownership stake in a work. There over 10 individual pieces required to establish a clear license of a song for it to be placed in a movie or used in an ad campaign. These proofs are the *basis of the right* to copyright.

Copyright trolls know most people don't know this; they take advantage of that gap in knowledge. Google's copyright trolling started with books in the late 1990s and early 2000s. At the time, I sent Google a letter telling them they do not have a right to scan my book, I do not give permission, and they better not cut me out of sales of my own product. For years Google has been attempting to become the biggest copyright troll of all time. Ask Ryan Fox, an attorney with the Authors Guild, Inc. (authorsguild.org) just how nasty this fight is continuing to get because Google's goals have not changed.

Even major labels, publishers, and other catalog administrators do a sloppy job of paperwork — some say this is by design. I reference here Warner Music Group's copyright claim to the *Happy Birthday* song. They never owned it, but Warner simply told everybody they did and collected royalties for 60 years. ***It took 60 years to have someone finally challenge them.*** Warner was ordered to pay millions in damages.

To assume Spotify's simplistic settlement arrangement is fair to victims is absurd on its face. If the settlement pot they've established is divided by even one million copyrighted songs that somehow manage to include themselves in the lawsuit, the fine per song is a mere \$43.45 — and that's if the years-long appeals are lost. It takes much more than \$43.45 to write, record, produce, legally protect and defend, and market a song.

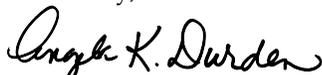
All music copyright holders — a/k/a Spotify victims — are being forced to give the thief a “get out of copyright jail free” card ***and*** being told to leave the door open so the thief can come back.

For the sake of all copyright holders both now and in the future who want to make money — if not a living — from their creations, I implore you not to allow this settlement to go through. Please do not approve it.

As it sits, this settlement isn't fair and it isn't right.

Your Honor, ***you*** are the one standing between millions of creatives and their rights as citizens of the United States. ***You*** are the one standing between the bullies holding works as hostage and the victims. I and millions of other creators pray you have the courage and wisdom to do the right thing.

Sincerely,

  
Angela K. Durden