Steven M. Chasin (SBN 228723)
BAKER & McKENZIE LLP
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
Tel: (202) 835-6132
Fax: (202) 416-7132
Steven.Chasin@bakermckenzie.com

-and-

Carl W. Hampe
BAKER & McKENZIE LLP
815 Connecticut Avenue, NW
Washington, DC 20006-4078
Telephone: +1 202 835 4259
Facsimile: +1 202 416 6979
Email: carl.hampe@bakermckenzie.com

Charles J. Sanders
ATTORNEY AT LAW, PC
29 Kings Grant Way
Briarcliff Manor, NY 10510
Telephone: +1 914 366 6642
Facsimile: +1 347 558 9658
Email: csanderslaw@aol.com

Attorneys for Amicus Curiae Songwriters Guild of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SCORPIO MUSIC (BLACK SCORPIO) S.A. and CAN'T STOP PRODUCTIONS, INC.

Plaintiffs,

vs.

VICTOR WILLIS

Defendant.

Case No. 3:11-CV-01557-BTM (RBB)

REPLY MEMORANDUM OF AMICUS PARTY SONGWRITERS GUILD OF AMERICA IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Date: January 20, 2012
Time: 11:00 a.m.
Courtroom: 15 – Fifth Floor
Judge: Hon. Barry T. Moskowitz

ORAL ARGUMENT NOT REQUESTED

Amicus Party Songwriters Guild of America ("SGA") replies herein to Plaintiffs' opposition to the points that SGA respectfully requests this Court to consider. Plaintiffs' most recent memorandum prompts our recall of the words of the 40th President of the United States: "well, there you go again."

I. PLAINTIFFS CONTINUE TO MISREAD THE COPYRIGHT ACT.

Plaintiffs continue to repeat their position over and again—contrary to the plain language of the statute—that a "grant" of copyright in a musical work by ***one*** author of a joint work is somehow synonymous with a joint grant by ***all*** authors of such joint work. The law is emphatically not in accord with this line of argument, and Plaintiffs' unsupported repetition, no matter how frequently offered, will not change that.

Congress set forth with remarkable clarity: (i) the ability of copyrighted works to have more than one author, 17 U.S.C. § 201(a); (ii) the ability of ownership of a copyright to be transferred in whole or in part, 17 U.S.C. § 201(d)(1); and (iii) how "any of the exclusive rights comprised in a copyright . . . may be transferred . . . and owned separately." 17 U.S.C. § 201(d)(2). Indeed, Congress even elaborated on this critical final point to clarify that: "The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protections and remedies accorded to the copyright owner by this title." *Id.* The plain reading of these provisions—Plaintiffs' subterranean reasoning notwithstanding—is that a musical work such as "Y.M.C.A." may have more than one author, and that each such author has the ability to transfer and terminate his or her rights ***separately and individually***.

SGA's interpretation of the statute is confirmed by the termination provisions in Section 203, where Congress recognized that a grant of copyright ownership may be terminated at the appropriate time both "in the case of a grant executed by one author," which is the case with Mr. Willis, or "in the case of a grant executed by two or more authors of a joint work." 17 U.S.C. § 203(a)(1). Plaintiffs do not assert, because factually they cannot, that Mr. Willis transferred his interests to Plaintiffs in the same legal instrument as the other authors. Because of this fact, the "majority of authors" language on which Plaintiffs hang their hat is simply irrelevant. Mr. Willis transferred his interests in "Y.M.C.A." and various other musical works by himself. Alone.

Therefore, he is entitled, pursuant to Section 203(a)(1) and Section 201(d)(2), to terminate those interests. Alone.

Plaintiffs assert that "[n]either Willis nor the SGA has offered any authority for the proposition that the right of less than a majority of the authors to terminate would depend on the fortuitous circumstance that all of the joint authors did not execute the same document when ***creating*** the work." Pl. Opp. Br. at 5 (emphasis added). This statement is meaningless, because the critical document is not the one "creating" the work, but rather the one "transferring" the work to Plaintiffs. And as just noted, both Willis and SGA previously offered the statutory authority above—Section 201(d)(2)—to show that a work such as "Y.M.C.A." can have more than one author, and ***each*** such author may transfer his interests and receive the full protection of the law with respect to such interests, including the right to terminate that transfer 35 years later.

II. PLAINTIFFS MISCHARACTERIZE OWNERSHIP OF COPYRIGHT IN POPULAR MUSICAL WORKS.

Plaintiffs next decry the supposed "chaos" that would result from this Court's endorsement of the copyright-ownership regime set forth by Willis and SGA. Plaintiffs' example of an adverse result, however, is nonsensical:

> The chaos can only be imagined as each co-writer of a joint work jockeys for position as being the one writer who could terminate the grant of copyright ownership to a third party publisher, ***and hence, administer the entire copyright on behalf of the other co-writers.***

Pl. Opp. Br. at 5 (emphasis added). The scenario set forth by Plaintiffs is a legal null set. If there were three writers of a musical work, and each writer transferred his or her copyright to a publisher in a single grant, then at least two of the writers would have to elect to terminate the publisher in order for the termination provisions in Section 203(a)(1) to be effective. The scenario in this litigation, however, is the opposite. Mr. Willis transferred his copyright interests alone, and was the only author in the particular grant now being noticed for termination. Mr. Willis has no other authors to consult, because he was the sole grantor of his copyright interests to Plaintiffs. The result, then, is that Mr. Willis will (it is to be hoped) be given permission to reclaim his copyright interest from Plaintiffs. The remaining authors of the musical works such

as "Y.M.C.A." will remain subject to their earlier transfers of copyright to Plaintiffs, unless they as well decide to terminate their separate interests. Until such additional terminations occur, however, Plaintiffs would continue to be the copyright owners of the remaining musical work copyrights in the musical works such as "Y.M.C.A." at issue in this litigation.

SGA also reiterates that the purpose of the termination provision is not—as Plaintiffs infer—to protect the authors of a joint work from one author "usurping" the rights of other authors through the termination process. Such a result is avoided by the divisible nature of copyright interests, as we describe above. Rather, the purpose of the termination provisions is to protect authors from unremunerative transfers of copyright interests that they made earlier in their careers, before the economic value of the works in question were fully understood. Plaintiffs' position here is completely inconsistent with this fundamental purpose of the termination right.

The multiple ownership result may seem cumbersome, but it is the reality with the vast majority of popular American musical works. To demonstrate this point, SGA attaches at Exhibit A a recent listing of The Billboard Hot 100. This is a listing by Billboard Magazine of the 100 most popular songs in its edition dated January 14, 2012. Each song on the list is accompanied by the Artist, Producer, and Songwriter. There are multiple songwriters and producers in most of the songs on this list. In addition, the alphabetical list of songs provides further information, including the copyright owner (usually a music publisher) for each song on the Hot 100. As is made obvious by this list in Exhibit A, all but 8 songs of the "Hot 100" have more than one songwriter and more than one publisher or copyright owner.[1] It is a simple fact that the alleged "chaos" described by Plaintiffs is in fact simply the business norm in the popular music community.

[1] For example, the song "Alone With You"—number 74 of the "Hot 100"—has ten copyright owners (as shown in the alphabetical list of songs).

III. CONCLUSION.

Plaintiffs are publishers of popular music. They are undoubtedly well aware of how frequently more than one publisher and more than one songwriter own the copyright interests that comprise a single musical work. For Plaintiffs to portray this complex reality as a scenario that is uncommon—or as one that is to be avoided in order to preserve the marketplace from chaos—is an argument best characterized as specious. It is in fact simply the way this particular marketplace has always functioned under the law, and still does, to the benefit of individual creators.

The Songwriters Guild of America thanks the Court for the opportunity to present this information on the topic at issue in this litigation.

DATED: January 13, 2012

Respectfully Submitted,

BAKER & MCKENZIE LLP

/s/ Steven M. Chasin
STEVEN M. CHASIN

Steven M. Chasin (SBN 228723)
BAKER & McKENZIE LLP
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
Tel: (202) 835-6132
Fax: (202) 416-7132
Steven.Chasin@bakermckenzie.com

-and-

Carl W. Hampe
BAKER & McKENZIE LLP
815 Connecticut Avenue, NW
Washington, DC 20006-4078
Telephone: +1 202 835 4259
Facsimile: +1 202 416 6979
Email: carl.hampe@bakermckenzie.com

Charles J. Sanders
ATTORNEY AT LAW, PC
29 Kings Grant Way
Briarcliff Manor, NY 10510
Telephone: +1 914 366 6642
Facsimile: +1 347 558 9658
Email: csanderslaw@aol.com

Attorneys for Amicus Curiae Songwriters Guild of America

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2012, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, and that I caused the foregoing to be mailed via FedEx to the non-CM/ECF participants indicated on the Manual Notice List.

/s/ Steven M. Chasin
STEVEN M. CHASIN

Steven M. Chasin (SBN 228723)
BAKER & McKENZIE LLP
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
Tel: (202) 835-6132
Fax: (202) 416-7132
Steven.Chasin@bakermckenzie.com

Attorney for Amicus Curiae
Songwriters Guild of America