



“You Can’t Always Get What You Want”?

The Musician-Politician Battle Over Copyright and Trademark Laws

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Peter Afrasiabi

Musical creators and political candidates have had a long and fraught relationship as candidates play certain songs at political rallies to inspire their base—sometimes to the chagrin of the original creators of the music. This confrontation, at a high level, involves musicians who want to control how politicians publicly play songs because the musicians do not want to be associated with a particular campaign or cause. And it involves politicians who want to plug into the social zeitgeist with music that moves people and engenders certain feelings.

But how this kind of grievance filters through our intellectual property laws is not nearly as clear as the musical class would like. The issue has a long and complicated history and takes us into the inner workings of copyright law, some antitrust decrees, and the

market realities that benefit immensely the creators, with a stop along the way to look at where trademark, right of publicity, and copyright law intersect.

“Born in the U.S.A.”: Copyright, Musician, and Performing Rights Organizations

Let’s start with the copyright and music basics that frame the issue. Musical compositions and sound recordings enjoy certain exclusive rights under federal law. These exclusive rights are exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work; (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes,

Peter Afrasiabi is a partner at One LLP in Newport Beach, California, where his practice focuses on copyright, trademark, and right of publicity litigation. He can be reached at pafraziabi@onellp.com.

and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.¹

That exclusive rights listing omits one right central to the musician-politician battle: There is no copyright-based express exclusive right to control the *association* of a copyrighted musical work with another person. This is the core frustration of our artists in this battleground.

In the modern era, one of the first high-profile situations involving this musician-politician battleground occurred in 1984 when Ronald Reagan used Bruce Springsteen's "Born in the U.S.A." at his campaign rallies. The immensely popular song, Reagan obviously felt, plugged into his base. Reagan even invoked the Boss at his rallies when he said: "America's future rests in a thousand dreams inside your hearts. It rests in the message of hope in songs of a man so many young Americans admire—New Jersey's own, Bruce Springsteen. And helping you make those dreams come true is what this job of mine is all about."²

Springsteen was not amused. But he did not sue, although he did publicly complain and begin speaking out.³ And the campaign ceased using the song after his complaints, perhaps because someone had actually listened to the song's lyrics by that point and realized that the lyrics did not really tell a jingoist "America is great" story. Or, more likely, it was not wise for Reagan to have the Boss publicly voicing his disapproval. This episode, however, marks the opening salvo in what has now become a cycle nearly every four years of musicians and politicians fighting over the public performance of songs at campaign rallies.⁴

Thus, the exclusive right at issue for public musical performance is what concerns us here. A musician who makes a song does not have to, by law, license its use to anyone. Yet artists want their songs heard on the radio, on internet streaming, and at bars and restaurants. How do they then give those venues a license to their exclusive performance right? This is where performing rights organizations (PROs) come in. PROs first came into existence over a century ago, when the American Society of Composers, Authors, and Publishers (ASCAP) was formed precisely because the myriad publishers and owners could not easily license thousands of venues individually and gauge who was playing what and then sort out proper apportionment of payments.⁵ Today, the familiar names are ASCAP, Broadcast Music Inc. (BMI), the Society of European Stage Authors and Composers (SESAC), and Global Music Rights (GMR).

Here is how they work: The PROs are an intermediary between public venues and the creators. Public performance licenses exist between copyright owners of musical compositions that allow the song (live or not) to be played in public (bars, restaurants, airports, concerts, radio, etc.), and the licensing agencies then license end-user venues. The PROs go to public venues (bars, shops, barbers, etc.) to make sure that anywhere music is played publicly, the venue has a license to publicly play the music. And they grant licenses to their respective catalogs so the venue can play any of the myriad works licensed by the

PRO. With complex formulas and statistical sampling, they then gauge use over the many millions of licensed songs and issue royalties to the owners. This intermediary role has created a market for individual musicians to monetize their right to the public performance of their songs across millions of venues.

In 1940, there was antitrust litigation against ASCAP and BMI that resulted in a consent decree that regulates their licensing efforts, a decree that, modified occasionally, stands today. That case was *United States v. American Society of Composers, Authors & Publishers*.⁶ The PROs were demanding blanket licenses, and the Department of Justice sued, contending that it was an illegal act of tying under the antitrust laws. The antitrust claims were not resolved, and the original litigation and some subsequent amendments to the consent decrees ultimately resulted in consent decrees with two fundamental requirements. First, they require that the PROs obtain only nonexclusive rights to musical performances so that the songwriters can still license their public performance rights individually (or opt out of the PRO system entirely and do all permissions on an ad hoc basis). Second, the PROs must grant a license on equal terms to all similar licensees.⁷

In the *Broadcast Music* case, CBS claimed that the blanket license was itself anticompetitive.⁸ Not so held the U.S. Supreme Court, given the unique nature of the market for public performance of music and the consent decrees:

The extraordinary number of users spread across the land, the ease with which a performance may be broadcast, the sheer volume of copyrighted compositions, the enormous quantity of separate performances each year, the impracticability of negotiating individual licenses for each composition, and the ephemeral nature of each performance all combine to create unique market conditions for performance rights to recorded music.⁹

Under the consent decrees, artists cannot partially withdraw their works from PROs. That is, artists or PROs cannot selectively remove certain works from a certain category of use, while still licensing those works through the PROs to other licensees (e.g., an artist cannot license a song to a PRO and then have the PRO only let that song play in alcohol-free restaurants but remove the song from the license of alcohol-based establishments). In short, a licensed work must be made available to all licensees, or the artist can choose not to license the work to anyone through the PRO.¹⁰ This is at the highest level the rub of the issue of selective withdrawal of works as it relates to political events at PRO-licensed venues.

"Rockin' in the Free World": Political Rallies and Music Today

In the 21st century, as more musician-politician battles erupted, the PROs have created political licenses that purportedly let artists withdraw their songs from those and only those licenses if they object to a given candidate using their music.¹¹ The PROs have argued publicly at least that selective removal can be done to protect the economic value of the work from being eroded, and that such partial withdrawal is permitted under the

consent decrees language that states “nothing in this Section IV(F) shall be construed to prevent ASCAP, when so directed by the member in interest in respect of a work, from restricting performances of a work in order reasonably to protect . . . the value of the public performance rights therein.”¹² But this selective withdrawal language has not been litigated and is at the heart of what would be future litigation over the legality of the selective political licenses given the antitrust fairness principles in the relevant consent decrees and the case law cited above.

Since Springsteen’s frustration at Reagan in 1984, other musicians have experienced similar frustrations. For example, in *Browne v. McCain*, John McCain created an audiovisual video commercial to criticize and comment on then-candidate Barack Obama’s energy policy and his suggestion that the country could conserve gasoline by keeping their automobile tires inflated to the proper pressure.¹³ During the commercial, a sound recording

Always Get What You Want.”¹⁸ And Trump did stop. But, again, the issue was not litigated. Perhaps Trump did what Reagan did and just moved on for a variety of nonlaw reasons. The Stones at least seemed to have gotten what they wanted, even if not by force of law.

Opening Pandora’s Box?

The legitimacy of a political license that allows selective withdrawals of songs to certain licensees has arguments on both sides of the question that have been flirted with in some cases, but no court has addressed it in the political license context. That said, some cases give us some clues to follow.

In the digital music age, many major music publishers felt that rates being paid for digital streaming were too low and so wanted to withdraw their license grants and negotiate directly with Pandora; but at the same time, they wanted to maintain

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of Jackson Browne performing “Running on Empty” played in the background.¹⁴ Browne sued under the Copyright Act, Lanham Act, and state right of publicity laws to protect against misrepresentation or confusion between him as an artist allegedly appearing to support the campaign as well as other state claims. McCain asserted, among other things, fair use at the Rule 12 stage, but it was denied as being too factual to adjudicate as a matter of law.¹⁵ The case later settled, so no ultimate resolution of our legal issue was achieved.

But on the copyright front, the campaign’s use of the sound recording in a television commercial was not ever subject to any performance license because it was synched (reproduced that is, which is one of the 17 U.S.C. § 106 exclusive rights) in an audiovisual work, which the public performance licenses do not reach. *That* use of a song absent consent (or some sort of defense such as fair use) would indeed infringe the reproduction right. Thus, our musicians are safe from politicians using their music in television or internet commercials, leaving our battle only in the area of public performances.

Then in 2020, Neil Young sued Donald Trump over the use of “Rockin’ in the Free World.”¹⁶ Young’s suit claimed that “Plaintiff in good conscience cannot allow his music to be used as a ‘theme song’ for a divisive, un-American campaign of ignorance and hate.”¹⁷ Young eventually dismissed the case, so no litigation addressed the viability of a political license carving out songs.

This brings us to the Rolling Stones and Trump, also in 2020. BMI, the PRO with the song, gave notice of a cease and desist to the Trump campaign when it was playing at rallies “You Can’t

their licensing via the PROs to traditional venues. This partial withdrawal situation led to litigation. In *Pandora Media, Inc. v. American Society of Composers, Authors & Publishers*, Pandora argued that since it had a blanket license, any partial withdrawals for its digital streaming service violated the consent decrees.¹⁹ The district court concluded that partial withdrawals for certain licensees (new media uses in the digital realm) tripped the consent decrees and that Pandora’s license could not be selectively subjected to withdrawal.²⁰

On appeal to the Second Circuit, the court held:

We agree with the district court’s determination that the plain language of the consent decree unambiguously precludes ASCAP from accepting such partial withdrawals. The decree’s definition of “ASCAP repertory” and other provisions of the decree establish that ASCAP has essentially equivalent rights across *all* of the works licensed to it. . . . *As ASCAP is required to license its entire repertory to all eligible users, publishers may not license works to ASCAP for licensing to some eligible users but not others.*²¹

Pandora’s holding then posits, logically, that in the political context, a partial withdrawal would be equally infirm. The music publishers in that case wanted to partially withdraw ostensibly to protect the economic value of the works, i.e., to earn more in digital new media licensing. The counterargument is that in the political license context, no antitrust concerns are triggered by partial withdrawals because music is not being

withdrawn to then allow one to extract higher rates for use by the same candidate.

Ultimately, the question would be whether selective licensing is necessary to protect the economic value of the work where the economic value is ostensibly damaged due to the associational harm of being associated with politicians, and if that is a legitimate argument and use of the decrees. The musicians and PROs today contend it is, but it is an open and untested question legally under the consent decrees. And it is a copyright question that, at its root, tries to define copyright-related rights in a way that is beyond § 106's express enumerated rights, an attempt perhaps to extend the copyright monopoly past its proper boundaries given the PRO licensing structures.

The Quid Pro Quo

This, thus, is the antitrust and copyright-based quid pro quo that our legal regime has long endorsed: Artists may create and release music and get all the attendant benefits of that creation in the economic sphere, by way of mass access to myriad outlets to have their music heard and then earn money from the public consumption of their music. But the trade-off has always been that once artists access the market in this manner, it must be done with fairness and access to all without discrimination against licensees.

Musicians of course are not without recourse. First, as to television commercials such as in the *McCain* case, uses of songs in those are violations of copyright law and stand outside the performance right issue. Second, as to the public performance right, artists do not have to place their songs into the PRO catalogs. If, say, Neil Young wants to ensure that Donald Trump does not play his songs at political rallies or that his songs are not played in “red” stadiums, he can withdraw his music entirely so it will not be in the blanket licenses, and then he can individually license myriad individual outlets (radio stations, online platforms, malls, bars, etc.). He of course does not want to do that because of the sheer cost and attendant loss of revenue by not having his songs in the PROs, the very rationale the Supreme Court has noted sits beneath the structure.²² And therein lies the rational economic bargain struck. An artist doing this exercise on a piecemeal basis to millions of outlets confronts an impossible challenge that the PROs have solved with their intermediary space in the market. And the PROs, to make sure they operate fairly, must abide by the antitrust decrees licensing to all fairly.

The antitrust antidiscrimination fairness principle is important in multiple respects. If PROs were able to start carving up licenses in this manner ostensibly to protect the “economic value,” then we may find certain states and their amphitheatres being denied access to music because they are “red” or “blue” states. Or we may find certain radio stations in certain geographies being denied the right to play certain artists because the station has an agenda the musician does not like. Or certain fast-food chains may find their license modified because artists don't like the chain, whereas other chains are approved. Or certain kinds of bars may be denied certain music if the artist does not like the bar or its patrons. One can imagine immense racial, gender, and sexual orientation-based issues arising from this kind of a world. Or, double-clicking further, what if certain candidates can play

certain songs, which are denied other candidates? Do we then actually politicize music in a far more profound way whereby certain artists are only allowed in “red” rallies and others only in “blue” rallies? These are thorny questions that raise real concerns about eroding the vitality of the decrees and entering a world of selective licensing that may tie demands together that concern antitrust laws. Thus, the old decrees, modified over time, were created and have stood for nearly a century for a reason: They work to address complex market issues in the execution of and monetization of the public performance right.

“The Girl from Ipanema”: Trademark and False Association?

Confronting these copyright limits and obvious uncertainty about the legality of the political carve out, some musicians have tried to argue that their song functions like a trademark. Nike can control the Swoosh logo because it is Nike's trademark and is associated with Nike. But can U2 control who performs or plays “One” on the theory that the song itself is a trademark? Think again to our earlier example: Springsteen's “Born in the U.S.A.” in 1984. By being played by Reagan at a 1984 campaign rally, Springsteen's concern was that people in the consuming public may have thought that he was endorsing Reagan. That association concern is generally the province of trademark laws.

The Lanham Act protects against false designations of origin and addresses false implied endorsement:

Any person who, on or in connection with any goods or services, . . . uses in commerce any word, term, name, symbol, or device, or any . . . false or misleading description [or] representation of fact, which—(A) is likely to cause confusion . . . or to deceive as to the affiliation, connection, or association of such person with another person, or as to the . . . sponsorship, or approval of his or her goods, services, or commercial activities by another person, . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.²³

But as it turns out, the federal courts have spoken on this and the law is fairly strong that trademark rights do not inhere in a musical song, as they do in tires and sunglasses. For example, *Oliveira v. Frito-Lay, Inc.*, involved the famed song “The Girl from Ipanema.”²⁴ There, Astrud Gilberto sued under the Lanham Act and state right of publicity laws for using the recording of her performance of “The Girl from Ipanema” in an advertisement. She argued that due to the success of the song, she had become closely associated with the song, even being known as “The Girl from Ipanema.”²⁵ But while recognizing that musical compositions in general are worthy of trademark protection, as they could become associated with a particular product, the court noted the absence of any precedent permitting a performer to hold a trademark in their own musical performance and so rejected her claim. The Second Circuit thus held that a fact finder “could not reasonably find an implied endorsement” because no law supported the idea that a performing artist “acquires a trademark or service mark signifying *herself* in a recording of her own famous performance.”²⁶

Related, in the Ninth Circuit, in the nonmusic context, the court has held that a party's use of a Three Stooges film clip in a film was not an act of trademark infringement. In *Comedy III Productions, Inc. v. New Line Cinema*, the defendant used a specific clip of the Three Stooges' work; the work was public domain so no copyright claim could be pleaded.²⁷ The plaintiff thus pleaded that the clip's use constituted trademark infringement by creating a false association. The Ninth Circuit labeled the trademark claim a "fanciful argument" because any use of a specific work that contains the persona of someone belonged to copyright law, not trademark law (and there the clip had no copyright protection since it was public domain).²⁸ That is, trademark law could not be used to circumvent what is the province of copyright. For our music issue, this is relevant because relabeling what is in the province of copyright as a trademark claim is generally not viable. At its root, a song is not itself also

claim to the reproduction of her sound recording in the audiovisual commercial because Ford did not use her actual recording (whereas McCain did use Browne's). Instead, Ford used a soundalike to rerecord the musical composition, which underlying musical composition Ford licensed from the copyright owner (not Midler).³¹ Midler and her label only had a copyright interest in her sound recording. Ford did this precisely because Midler refused to do the commercial when asked. Because Ford could not get the right to synch (reproduce) Midler's original sound recording in the commercial and it really wanted her voice singing that song, it hired a soundalike to reproduce that song with a Midler-sounding voice. For these reasons, Midler's argument had to thread the lines between impermissible trademark claims (ala *Oliviera*) and a lack of a copyright claim due to the vicissitudes of the facts and copyright law (a soundalike recording is not a reproduction of the original), and land in right of

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a trademark that belongs to the song's creator such that a lawful copyright-based use of the song can nonetheless be deemed a trademark infringement.

This is not to say that a commercial entity can hire a soundalike to record a near copy of someone's voice and use that aspect of their state right of publicity to sell commercial products. This brings us to Bette Midler. In a commercial, Ford used a soundalike artist to record a song Midler had recorded in the 1970s, "Do You Want to Dance," itself a cover of a 1958 Bobby Freeman song. Midler sued under state right of publicity laws, claiming that her voice had protection under state law from commercial exploitation by others.²⁹ She did not argue that the song sung in the commercial was associated with her. The Ninth Circuit ruled in her favor on the right of publicity aspect of her voice being protected from soundalikes operating for commercial gain:

Why did [the defendants] studiously acquire the services of a sound-alike and instruct her to imitate Midler if Midler's voice was not of value to them? What they sought was an attribute of Midler's identity. Its value was what the market would have paid for Midler to have sung the commercial in person. . . . [T]he human voice is one of the most palpable ways identity is manifested.³⁰

Here is where there is fascinating copyright complexity to this case that matters in our musician-politician battle. Midler, unlike Browne in *Browne v. McCain*, did not have a copyright

publicity based on the theory that her unique voice, an aspect of her protected identity, was appropriated for commercial gain.

But that state right of publicity protection for one's voice, name, likeness, or image as against commercial exploitation does not extend to lawful public performance of a licensed song at a public venue in a political campaign rally, and *Midler* did not allow a musical song to be itself a trademark such that Midler could ever control who played her recorded song publicly when licensed.

After all, does your local Irish tavern that plays U2 music at the bar through the speaker system really create the idea that U2 endorses the tavern? Or if, before Chris Rock takes the stage at an amphitheater to do his comedy routine, we hear Guns N' Roses music playing under a PRO license, do we really think Axl Rose is endorsing or affiliated with Chris Rock? At a much higher level, our trademark laws do not let artists, who release music into the world and where that music then takes on some broader social meaning to listeners, control the social messaging that people take from the song itself or what venue gets to play the song under a license via trademark laws, when copyright laws are their center of gravity.

The Musician-Politician Dance Continues

The balance that exists in copyright law and the PRO anti-trust decrees has created a remarkably efficient market for the monetization of the public performance right. Under current law, musician complaints about PRO-licensed candidates or

establishments playing their music really do not hold copyright vitality for litigation but have not been tested by anyone, surely due to the immense uncertainty. And another aspect of the way this market works also is important. Recall Bruce Springsteen, who voiced his opinion. *That* carries weight, and politicians may well not want to engender that if the alternative is a neutral vacuum. This is especially so in the social media age where a famed musician can reach millions easily and constantly, and in the process dispel any perceived associational confusion anyway.

There may be attempts to modify the antitrust decrees to create judicially blessed political carve outs from the consent decrees and essentially achieve what current laws really do not clearly permit. But until then, candidates get to buy licenses, attend public rallies at similarly licensed venues, and have licensed music publicly play. If the political licenses have carve outs not issued to other licensees, then they are questionable and arguably infirm. For the musicians or PROs, the argument that selective licensing is necessary to protect the economic value is a Pandora's box that risks tripping the consent decrees and crossing the lines drawn in *Pandora*. At the same time, understandably no politician busy running for office wants to invest in litigation of this issue. A market-driven détente exists. Time will tell how courts resolve this, if anyone dares litigate it. Until then, we have this delicate musician-politician dance every four years, where public cries of horror are made, some cases are filed, much public discourse occurs, cases are dismissed, new songs are chosen by campaigns, and then everyone goes back to their corners until the next election cycle.

Perhaps, then, we can best sum up, on the one hand, the copyright, antitrust, right of publicity, and trademark laws as they intersect, on the other hand, with the musicians' desire to control what music politicians may play at campaign events by singing the Rolling Stones' immortal words, "You can't always get what you want." ■

Endnotes

1. 17 U.S.C. § 106.
2. *Remarks at a Reagan-Bush Rally in Hammonton, New Jersey*, RONALD REAGAN PRESIDENTIAL LIBR. & MUSEUM (Sept. 19, 1984), <https://www.reaganlibrary.gov/archives/speech/remarks-reagan-bush-rally-hammonton-new-jersey>.
3. Marc Dolan, *How Ronald Reagan Changed Bruce Springsteen's Politics*, POLITICO MAG. (June 4, 2014), <https://www.politico.com/magazine/story/2014/06/bruce-springsteen-ronald-reagan-107448/>; Eveline Chao, *Stop Using My Song: 35 Artists Who Fought Politicians Over Their Music*, ROLLING STONE (July 8, 2015), <https://www.rollingstone.com/politics/politics-lists/stop-using-my-song-35-artists-who-fought-politicians-over-their-music-75611/>.
4. For historical context in this long-standing fight: In 1988, Bobby McFerrin was upset at George H.W. Bush over the use of "Don't Worry, Be Happy." In 1996, Isaac Hayes was angered by Bob Dole's use of "I'm a Dole man." In 2008, Sam Moore expressed public frustration over Barack Obama's use of "Hold On, I'm Comin'." That same year, Gretchen Peters publicly complained about Sarah Palin's use of "Independence Day." Chao, *supra* note 3.
5. *See About Us*, ASCAP, <https://www.ascap.com/about-us> (last visited Feb. 20, 2025).
6. No. 13-95, 1941 U.S. Dist. LEXIS 3944 (S.D.N.Y. Mar. 4, 1941).
7. *See* *Broad. Music, Inc. v. CBS, Inc.*, 441 U.S. 1, 11–12 (1979) (describing decrees); *United States v. Am. Soc'y of Composers, Authors & Publishers*, 208 F. Supp. 896, 897–99 (S.D.N.Y. 1962) (refusing to interpret the consent decree to allow partial licenses of a PRO catalog: "Section VI [of the consent decree] provides for the granting of a nonexclusive license to perform 'all of the compositions in the ASCAP repertory.' While this provision standing alone might lend itself to an interpretation that 'all' could encompass a direction to grant licenses on 'any or some' as desired by an applicant, when read with the sentence following it and with the other provisions of the judgment, particularly Section VII(B) and (C), it is clear that 'all' refers to a blanket license to include the entire repertory as distinguished from the other type of license (the 'per program' license) which is limited to a specified composition.").
8. *Broad. Music, Inc.*, 441 U.S. at 6.
9. *Id.* at 14–15.
10. *See generally* CONG. RSCH. SERV., IF11463, MUSIC LICENSING: THE ASCAP AND BMI CONSENT DECREES (2020), <https://crsreports.congress.gov/product/pdf/IF/IF11463>.
11. *See Using Music in Political Campaigns*, ASCAP, <https://www.ascap.com/help/ascap-licensing/political-campaign-license-faqs> (last visited Feb. 20, 2025); *Music Licensing for Political Entities or Organizations*, BMI, <https://www.bmi.com/licensing/entry/political> (last visited Feb. 20, 2025).
12. *United States v. Am. Soc'y of Composers, Authors & Publishers*, No. 41-1395, 2001 WL 1589999, at *4 (S.D.N.Y. June 11, 2001) (AFJ2 Consent Decree § IV(F)).
13. 612 F. Supp. 2d 1125 (C.D. Cal. 2009).
14. *Id.* at 1066–67.
15. *Id.* at 1072–73.
16. *Young v. Donald J. Trump for President, Inc.*, No. 20-cv-06063 (S.D.N.Y. filed Aug. 4, 2020).
17. Complaint ¶ 1, *Young*, No. 20-cv-06063 (S.D.N.Y. Aug. 7, 2020).
18. *Rolling Stones Threaten to Sue Donald Trump Over Use of Songs*, GUARDIAN (June 28, 2020), <https://www.theguardian.com/us-news/2020/jun/28/rolling-stones-threaten-to-sue-donald-trump-over-use-of-songs>.
19. *In re Pandora Media, Inc.*, No. 12 Civ. 8035, 2013 U.S. Dist. LEXIS 133133 (S.D.N.Y. Sept. 17, 2013).
20. *Id.* at *1–2.
21. *Pandora Media, Inc. v. Am. Soc'y of Composers, Authors & Publishers*, 785 F.3d 73, 77 (2d Cir. 2015) (second emphasis added).
22. *Broad. Music, Inc. v. CBS, Inc.*, 441 U.S. 1, 20 (1979) ("A middleman with a blanket license was an obvious necessity if the thousands of individual negotiations, a virtual impossibility, were to be avoided.").
23. 15 U.S.C. § 1125(a)(1).
24. 251 F.3d 56 (2d Cir. 2001).
25. *Id.* at 58–59.
26. *Id.* at 60, 62 (emphasis added).
27. 200 F.3d 593 (9th Cir. 2000).
28. *Id.* at 595.
29. *Midler v. Ford Motor Co.*, 849 F.2d 460 (9th Cir. 1988).
30. *Id.* at 463.
31. *Id.* at 462.