



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0024

August 22, 2024

Michelle Shocked

CLAIMANT

v.

Law Rocks

RESPONDENT

FINAL DETERMINATION

This matter has been fully submitted by the parties. For the reasons that follow, the Copyright Claims Board (“Board”) finds in favor of Respondent Law Rocks, Inc. (“Respondent” or “Law Rocks”) and dismisses the claim against Law Rocks with prejudice.

I. Procedural History

Claimant Michelle Shocked (“Shocked” or “Claimant”) filed her copyright infringement claim on January 21, 2023, and selected a smaller-claims proceeding. (Dkt. 1). Shocked amended her claim on February 15, 2023. Claim (Dkt. 3). Law Rocks filed its Response to the Claim on September 14, 2023. (Dkt. 15). Discovery closed on January 18, 2023. (Dkt. 22). The parties were directed to file their statements and evidence by March 27, 2024. (Dkt. 23). On March 28, 2024, Shocked submitted a position statement (Dkt. 24) and evidence (Dkt. 25-36), and Law Rocks submitted a position statement (Dkt. 37), evidence (Dkt. 38; “Respondent Evidence”), and a witness statement (Dkt. 39) by its director Omi Crawford (“Crawford”). Pursuant to 37 C.F.R. § 226.1, a Merits Conference was held on April 10, 2024. Merits Conference (transcript on file with the Board) (“Trans.”). At the Merits Conference, Shocked, Crawford, and Charles Jarrell (“Jarrell”) testified. *Id.* The Board issued a Proposed Statement of Facts on June 26, 2024. (Dkt. 45; “Proposed Facts”). Shocked submitted objections and proposed additions to the Proposed Facts (“Objections”) on July 17, 2024 (Dkt. 46), and Law Rocks confirmed, on the same date, that it had no objection to the Proposed Facts. (Dkt. 47).

The case is now ready for final determination.

II. Factual History

For an understanding of the facts underlying this proceeding, the reader is referred to the Findings of Fact,

attached to this determination. An order regarding Shocked's Objections ("Order") is also attached.¹

III. Legal Analysis

A. Merits

To succeed on a claim for copyright infringement, a claimant must establish: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publications, Inc. v. Rural Telephone Serv. Co., Inc.*, 499 U.S. 340, 361 (1991). In the present case, there is no question that Shocked owns the Works and that her performance of the Works at the NYC Event was embodied in a video recording ("Video") created on behalf of Law Rocks. Claim (Dkt. 3); Trans. at 2:06:31-2:08:06, 2:15:22-2:15:33.

B. Defenses

Law Rocks asserts several defenses to Shocked's claim of copyright infringement. In particular, Law Rocks contends that Shocked does not have a valid copyright claim in the Video and is not entitled to damages because: (1) Shocked gave it an implied, irrevocable license to record the performance at issue here; (2) the Video was immediately and permanently discarded and was never viewed, shared, posted or distributed and therefore Shocked did not suffer any harm; and (3) Shocked has no copyright infringement claim based on the recording of her live performance and cannot bring a claim before the Board under the Copyright Act's "anti-bootlegging" provision (17 U.S.C. § 1101). Response (Dkt. 37).

1. Implied License

A license is a defense to infringement. *Keane Dealer Services, Inc. v. Harts*, 968 F. Supp. 944, 947 (S.D.N.Y. 1997) (*citing Oddo v. Ries*, 743 F.2d 630, 634 n. 6 (9th Cir. 1984)); *see also* 3 M. Nimmer, *Nimmer on Copyright* § 13.04 (1983).

While exclusive licenses must be in writing,

a nonexclusive license may be granted orally, or may even be implied from conduct In fact consent given in the form of mere permission or lack of objection is also equivalent to a nonexclusive license and is not required to be in writing.

Id. (*quoting I.A.E., Inc. v. Shaver*, 74 F.3d 768, 775 (7th Cir. 1996)). While an implied license can be revoked if nothing of value has been provided for the license, such a license is irrevocable if something of value ("consideration") has

¹ All defined terms in the Findings of Fact and Order are incorporated in this Final Determination, except as noted.

been given to the licensor in exchange for the license. *I.A.E., Inc.*, 74 F.3d at 772; *Antec Sys. v. Peiffer*, 21 F.3d 568, 574 n. 12 (4th Cir 1994). “When the totality of the parties’ conduct indicates an intent to grant such permission, the result is a nonexclusive license.” 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 10.03[A][7] (2024).

Here, Law Rocks argues that Shocked knew of Law Rocks’ recording of her live performance and failed to object, and her acquiescence granted an implied license allowing the filming. Respondent Position Statement at 8-9. Attached to the Group’s application to play at the NYC Event was a section titled “Important additional details about playing the event.” Among those details was the statement: “The concert will be professionally filmed; the digital files will be sent to all participants.” Below that statement, either Shocked selected “I accept” or she authorized Kastner’s assistant Joan Companara to do so. Crawford Witness Statement ¶¶ 4-5; Trans. at 7:43-9:35, 25:29-25:55; Respondent Evidence, Exh. 1 at 1-3.

On August 22, 2022, and again the following day, Law Rocks sent Shocked a Welcome Packet, which contained important information about logistics, fundraising, photography at, and filming of the concert. (“Claimant Evidence” at Email 20 (Dkt. 36); Respondent Evidence, Exh. 5; Crawford Witness Statement ¶ 7. The Welcome Packet described the rules and requirements that performers were to adhere to before and during the NYC Event as well as the consideration that Law Rocks would be providing to performers including the fact that the money raised by the performers would go to a charity chosen by the performers, stating again that: “The concert will be professionally filmed” and that the resulting digital files would be sent to the participants. Respondent Evidence, Exh. 5 at 5-6. Shocked is president of Fraudulent First Sale Project (“FFS Project”), the nonprofit to which she chose to send the money raised. Trans. at 2:01-2:20; *see also* Claimant Evidence at Emails 23, 50-52. FFS Project has an address of record which is the same as Shocked’s address. Claimant Evidence at Emails 51, 88.

While Shocked was not definitive about whether she reviewed the Welcome Packet before the performance (Trans. at 30:18-35:18), she forwarded it to other members of the Group and offered to represent them with respect to their participation in the NYC Event. Claimant Evidence at Email 21. In addition to taking responsibility for submitting the application, allowing her name to appear as the filer, and passing the Welcome Packet on to her fellow band members, she continued to represent the Group in connection with the NYC Event. *Id.*; Respondent Evidence,

Exh. 4. Neither Shocked nor her bandmates, who were copyright lawyers, objected to Law Rocks filming their performance at the NYC Event either before or during that event. Respondent Evidence, Exh. 1 at 3; Trans. at 2:21-2:47, 1:23:53-1:24:02, 2:08:00-2:08:36.

Law Rocks' director Crawford testified that it is Law Rocks' practice to record the performances at each of its charity concerts, and it contracts a local videographer in each city to do so. Once Law Rocks receives the footage of the performances from a concert, it distributes to each performer the video of their performance so that they can share the video with friends and family. Law Rocks also posts the videos to its YouTube channel. Trans. at 1:52:59-1:54:44. Prior to Shocked's objections to the video recording, no performer had ever objected to the filming of their performance at a Law Rocks concert. Crawford Witness Statement ¶ 3. Crawford testified that Law Rocks would not have filmed such a performance if the performer had objected. Trans. at 1:57:54-1:58:28.

Thus, it is clear from the totality of the parties' conduct that an implied license was created between Shocked and Law Rocks. After being notified in advance of the recording of her performance several times, and taking on the responsibility of being the Group's primary contact with Law Rocks, Shocked's mere lack of objection to the filming of her performance is equivalent to a nonexclusive license. *See Keane Dealer Services*, 968 F. Supp. at 947. Further, the Group's application affirmatively stated that they accepted the fact that their performance would be recorded. Respondent Evidence, Exh. 1 at 4; Crawford Witness Statement ¶¶ 4-6.

It is also clear that the license is irrevocable because Law Rocks provided consideration to Shocked for the implied license to record her performance. *See I.A.E., Inc.*, 74 F.3d at 772; *Artec Sys.*, 21 F.3d at 574 n. 12. Law Rocks paid proceeds from the event to FFS Project, Shocked's chosen nonprofit. Trans. at 2:09-2:20; Claimant Evidence at Email 52 (Shocked stated, "November 28, 2022 I received a check from Law Rocks, \$1048.66 payable to FFS Project."). Even if no consideration had been provided to Shocked, the implied license was not revoked before her performance was recorded, and any attempted revocation was ineffectual because there was no infringing use after the recording.

Further, Shocked has suffered no damages as a consequence of the recording of her performance. The fact that the Video was quickly and permanently deleted after Shocked objected to it is uncontroverted. *See id.* at 2:42:30-55,

41:34-42:30, 44:27-44:34. Both Crawford and Jarrell testified that they had been assured that the recordings were permanently discarded and destroyed. *Id.* at 2:18:40-2:18:53, 2:40:57-2:41:08; *see also* Respondent Position Statement at 2; Crawford Witness Statement ¶¶ 14-16. Shocked submitted no evidence to the Board which would demonstrate that the Video was distributed, sold, copied, displayed, or otherwise used. Shocked testified that she neither searched for nor saw the allegedly infringing video on YouTube or any other online platform. *Trans.* at 41:34-42:30, 44:27-44:34. Further, no other individual or entity informed Shocked that the footage was available anywhere, either online or otherwise, *id.*, and Law Rocks never received notification of such availability. *Id.* at 2:42:30-2:42:55. Indeed, because of Shocked's objection to it, the Video was never even sent to Shocked or the Group. *Id.* at 2:15:38-2:16:00.

The Board finds that Law Rocks had an implied license to record Shocked's performance at the NYC Event, and the Board has no basis to find that Law Rocks made any further use of the Video. Therefore, the Board concludes that Law Rocks did not commit copyright infringement and Shocked suffered no damages as a result of the recording of Shocked's performance at the NYC Event.

2. Other Defenses

Because the Board finds that Shocked gave an implied license to record her performance, and Shocked does not show that Law Rocks exceeded the scope of the license, the Board finds no need to decide the issue of whether, as Law Rocks' argues, Shocked cannot state a copyright infringement claim based on the recording of her live performance. *See* Respondent Position Statement at 9-10. Law Rocks also asserts that Shocked could not sustain a claim under the anti-bootlegging provision of the Copyright Act, 17 U.S.C. §1101, but acknowledges that Shocked has not brought such a claim. Respondent Position Statement at 10. While it is certainly true that the Board cannot hear a claim brought under that statute, the Board need not go any further in deciding that issue.

3. Claimant's Conduct

This is a case that should not have been commenced, and Shocked has been warned about bringing meritless cases before the Board in the past. *See* Final Determination, *Shocked v. Billington*, Claim No. 22-CCB-0058 (April 3, 2024) ("in any future filings, Shocked should consider whether she is attempting to stretch copyright law too far"). In addition to the fact that Shocked never objected to the filming of her performance even though she was informed of the filming

on more than one occasion, she ignored the strong and repeated counsel of her copyright attorney, Kastner. Claimant Evidence at Emails 75, 79, 83, 85, 87, 90, 92.

Nevertheless, Shocked proceeded with this claim despite a total lack of factual support. When she began objecting to the Video, she was repeatedly reminded that she had been informed and had authorized the recording. Evidence submitted by Shocked demonstrates that Kastner, whom Shocked called a “very highly respected law professional” and “an experienced copyright lawyer with more than 45 years of experience” (Trans. at 50:20-50:25, 53:57-54:50, 1:23:53-1:24:02), warned her that her arguments were not “legally supportable,” and bluntly stated: “I do not think you will win this at the CCB.” Claimant Evidence at Emails 75-87, 92. Rejecting facts and advice laid out by counsel can support a bad faith finding. *See Neft v. Vidmark, Inc.*, 12 F.3d 1107, 1993 WL 472850, *3 (9th Cir. Nov. 17, 1993) (affirming 28 U.S.C. § 1927 sanctions); *International Star Class Yacht Racing Ass’n v. Tommy Hilfiger, U.S.A., Inc.*, 80 F.3d 749, 754 (2d Cir. 1996).

It is also clear that she suffered no harm from the mere recording of her performance. Especially egregious is the fact that Law Rocks is a non-profit entity that donates any money raised at its concerts to local charities, and earns no money from the videos it records at its concerts. Respondent Position Statement at 2. It is undisputed that Law Rocks did not earn any money from the recording of Shocked’s performance as it does not sell or license its videos and its YouTube account is not monetized. Trans. at 2:19:57-2:20:12, 2:25:20-2:28:30.

Arguably, Claimant should be found in bad faith and required to pay Law Rocks’ reasonable costs and attorney’s fees under 17 U.S.C. § 1506(y)(2), which provides for awards of up to \$5,000 for bad-faith conduct. Given that Claimant is *pro se* and that Law Rocks elected not to seek monetary relief “in order to put this matter behind it as quickly and efficiently as possible” (Respondent Position Statement at 12), such a finding and award would not be in the interests of justice.

IV. Conclusion

The Board dismisses the claim against Respondent Law Rocks, Inc. with prejudice.

Copyright Claims Board



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FINDINGS OF FACT

Based on the parties' written submissions and the witness testimony at the April 10, 2024 Merits Conference, the Copyright Claims Board ("Board") finds the following facts as established.

1. Shocked is a songwriter, performer, and the president of the Fraudulent First Sale Project ("FFS Project"). Merits Conference Testimony (transcript on file with the Board; "Trans.") at 2:01-2:08. FFS Project was the charity to which Shocked chose to send the money raised from her performance at the Law Rocks event in New York City ("NYC Event"). *Id.* at 2:09-2:20; Claimant Evidence at Email 23 (Dkt. 36). The FFS Project has an address of record which is the same as Shocked's address. Claimant Evidence at Emails 51, 88.
2. Law Rocks is a 501(c)(3) nonprofit organization, founded in 2009, that raises money by hosting charity concerts in various cities around the world. The performers in the concerts are largely members of the legal community. At each Law Rocks concert, each participating band selects a charity to support. Respondent Position Statement at 3 (Dkt. 37).
3. Claimant is the copyright owner of five musical works registered by the U.S. Copyright Office. Those works are "If Love Was a Train" and "Anchorage" (Reg. No. PA0000411583), "Come a Long Way" (Reg. No. PA0000575541), "On the Greener Side" (Reg. No. PA0000440105), and "33 RPM Soul" (Reg. No. PA0000575540) (collectively, the "Works"). Claim (Dkt. 3).
4. On two occasions, Shocked has performed with a group of attorneys. Trans. at 2:21-2:47. That group of attorneys performs under the name "Crude, Humble, and Obvious" (the "Group"). One member of the Group was Drew Kastner ("Kastner"). Respondent Evidence, Exh. 1 at 2-3 and Exh. 3 at 1. (Dkt. 38).
5. Shocked testified that Kastner is a copyright attorney who also served as a board member of FFS Project. Trans. at 50:09-50:29, 58:22-59:18, 1:23:53-1:24:02. Additionally, Kastner provided ongoing legal representation to Shocked and FFS Project at the time of the alleged infringement. Claimant Evidence at Emails 1-15, 56-95; Trans. at 9:14-9:45.
6. Sometime around August 8, 2022, the Group and Shocked decided they would like to perform at the Law Rocks Washington, DC Event ("Law Rocks DC Event"). Claimant Evidence at Email 2. Kastner, through intermediaries, was put in touch with Ted Scott ("Scott") and Omi Crawford ("Crawford"), the Director of

Law Rocks (Crawford Witness Statement (at 1 (Dkt. 39)), who oversaw the Law Rocks DC Event.

Claimant Evidence at Emails 1-17. In subsequent email correspondence on August 8, 2022, Scott noted that “Law Rocks DC is pretty set at this point,” but stated that the band could perform in a concert in a different city. *Id.* at Emails 6, 8.

7. In an email to Scott, Crawford, and others on August 15, 2022, Kastner stated that the Group would focus on the upcoming Law Rocks NYC Event scheduled for October 20, 2022. *Id.* at Email 11. On August 18, 2022, Crawford emailed information about the NYC Event to Shocked and Kastner. *Id.* at Email 13.
8. On August 22, 2022, Crawford, Shocked, and Kastner held a meeting on Zoom about the upcoming NYC Event. After the meeting, Crawford emailed Shocked and Kastner additional information and attached the “NYC Band Welcome Kit” and the “Sponsorship Package” (collectively, the “Welcome Packet”) to the email. The Welcome Kit provided important information about logistics, fundraising, photography at and filming of the concert. Crawford directed Kastner and Shocked to apply at lawrocks.org/rock to “officially sign up” for the event. *Id.* at Emails 20-22.
9. Law Rocks used Typeform, a software that creates an embedded webform on the Law Rocks website, to collect band applications for events. Interested applicants type in their answers to the questions one by one. The form also showed the filer important information about, and requirements for, playing at the event. Once complete, the application is created and emailed to Law Rocks. Trans. at 1:55:25-1:56:30; Respondent Evidence, Exh. 1 & 3.
10. On August 22, 2022, Law Rocks received an application from “contact@michelleshocked.com” for “Michelle Shocked featuring CSUSA’s Crude, Humble & Obvious” to play at the NYC Event. Respondent Evidence, Exh. 1 at 1-3. The form specified the Group members, their legal affiliations, and the nonprofit that would be the beneficiary of the Group’s fundraising efforts. *Id.*
11. Shocked testified that Kastner’s assistant, Joan Companara (“Companara”), filled out the form on the Law Rocks website for the NYC Event using information provided by Shocked in a phone call with Companara about the Law Rocks DC Event. Trans. at 7:02-7:48. Companara, who had permission from Shocked to fill out the form using Shocked’s name and contact information, collaborated with Shocked about specific language in the form. *Id.* at 7:43-9:35, 25:29-25:55. Attached to the Group’s application was a section titled “Important additional details about playing the event.” Among those details, was the statement “The concert will be professionally filmed; the digital files will be sent to all participants.” Below that statement, either Shocked selected “I accept” or she authorized Companara to do so. *Id.*; Crawford Witness Statement ¶¶ 4-6; Respondent Evidence, Exh. 1 at 1-4.
12. As Crawford testified, the form indicated that it was completed and sent by Shocked from contact@michelleshocked.com. Respondent Evidence, Exh. 3; Trans. at 2:02:55-2:03:18. In addition, on August 22, 2022, Shocked sent an email to Crawford and Kastner in which Shocked stated, “I’ve completed the lawrocks.org/rocks application form for ‘Michelle Shocked featuring CSUSA’s Crude Humble &

Obvious' as best I could." In that email, Shocked also offered to change the billing for the band if Law Rocks wanted to emphasize the legal professionals in the group. Respondent Evidence, Exh. 2 at 1. On August 23, 2022, Shocked sent another email to Law Rocks which stated, "Just to confirm I've completed the band profile." *Id.*, Exh. 4 at 2.

13. During these email exchanges Shocked used two emails interchangeably: mshocked@michelleshocked.com, which she stated is her personal email address, and contact@michelleshocked.com, which she stated is her business email address. Trans. at 36:50-37:31.
14. On August 23, 2022, Crawford sent an email to Shocked and Kastner, which confirmed that Shocked's application to perform at the NYC Event was granted. The email also contained the same Welcome Packet that Shocked received on August 22, 2022, after the Zoom meeting. Respondent Evidence, Exh. 5.
15. The Welcome Packet contained "Playing the Event" information including deadlines, rules, and requirements. *Id.* at 6. Specifically, the Welcome Packet stated that "[t]he concert will be professionally photographed; the high resolution photo files will be sent to all participants. The concert will be professionally filmed; the digital files will be sent to all participants." This information was located with other important technical information about lighting, sound, green rooms, and staging. The Welcome Packet also included significant details regarding ticketing, set length, playlist, order of play, sound checks, and encores at the event. *Id.*
16. On August 22, 2022, Shocked forwarded the Welcome Packet to other members of the Group. In the email, Shocked stated that the members of the Group were "[w]elcome to look over the Welcome Kit and Sponsorship forms and offer your input, or I'll just represent for us all, as best I can." Claimant Evidence at Email 21.
17. At the Merits Conference, Shocked was not definitive about her recollection whether she reviewed the Welcome Packet. Trans. at 30:18-35:18. However, Shocked took responsibility for submitting the application, allowed her name to appear as the filer, received the Welcome Packet on more than one occasion, passed it on to her fellow bandmates, and continued to represent the Group in connection with the NYC Event. Claimant Evidence at Email 21. Shocked's continuing involvement in directing the Group's participation in the NYC Event is also evidenced by an email that she sent to Crawford on August 24, 2022, in which she indicated her preference for using one photo of the Group over another on Law Rocks website. Respondent Evidence, Exh. 4. Shocked did not object to any of the provisions contained in the materials that Law Rocks sent her until after the performance.
18. Shocked and the attorney members of the Group did not discuss Law Rocks' filming policy with Law Rocks, or object to the filming in advance of the performance. Trans. at 2:08:00-2:08:36.
19. Crawford testified that it is Law Rocks' practice to record the performances at each of its charity concerts and it contracts a local videographer in each city to do so. Once Law Rocks receives the footage of the performances from a concert, it distributes to each performer the video of their performance so that they

can share the video with friends and family. Law Rocks also posts the videos to its YouTube channel. *Id.* at 1:52:59-1:54:44.

20. Crawford testified that Law Rocks' YouTube account is not monetized, and Law Rocks does not receive any income from the streaming of videos on that account. *Id.* at 2:19:57-2:20:12, 2:25:20-2:28:30.
21. No performer had ever objected to the filming of their performance at a Law Rocks event prior to the NYC Event (Crawford Witness Statement ¶ 3) but Crawford testified that they would not have filmed such a performance if any performer had objected. Trans. at 1:57:54-1:58:28.
22. On October 20, 2022, "Michelle Shocked featuring Crude, Humble & Obvious" performed at the NYC Event, without Kastner who was unable to perform. Claimant Position Statement at 1-2 (Dkt. 24); Trans. at 7:28-42. The Group performed five songs. Claimant Position Statement at 1. Shocked's work "Anchorage" was included in the original playlist. Claimant Evidence at Email 45.
23. All performances during the NYC Event were recorded by Chris Carden ("Carden"), a videographer contracted by Law Rocks for the NYC Event and other East Coast Events. Trans. at 2:06:31-2:08:06, 2:15:22-2:15:33. The recordings were made on behalf of Law Rocks. *Id.*
24. Shocked testified that she was aware that there were professional photographers at the event but has testified that she was unaware that the performance would also be recorded. *Id.* at 16:33-18:33. Crawford testified that Carden was likely in the back of the venue at the NYC Event. *Id.* at 2:16:19-2:17:10.
25. On October 21, 2022, Crawford sent a thank-you email to participants, which asked participants to complete a survey, gave details about how much money was raised, and told participants where they could find photographs of the event. The email also stated: "Video will be edited and sent within two weeks." Claimant Evidence at Email 46.
26. On October 22, 2022, Shocked sent an email to Crawford inquiring about the video recording of the Group's performance ("Video"). The email stated, in part, "[w]as any mention made in the participation for Law Rocks process that video recordings were being made?... Was there any mention regarding a livestream of the performances?" *Id.* at Email 48.
27. On October 22, 2022, Crawford responded to Shocked's email stating:

"Yes, the application does include the information that the charity event will be professionally filmed bands are always thrilled to receive footage of their rock star moment! There was no livestream. Obviously as a professional musician playing originals you are not our usual participant. From your email I'm assuming you would request we do not include video of your set on our channel or downloads or anywhere else. We would of course respect that for you or anyone else who asked."

Id. at Email 49.
28. Shocked and the Group never received the recording of their October 20, 2022, performance from Law Rocks. Trans. at 2:15:38-2:16:00.

29. During November and December 2022, Shocked continued to email Law Rocks to request transfer of the “raw footage” of the Group’s performance and to assert ownership of the recording. Claimant Evidence at Emails 54, 55.
30. On January 20, 2023, Charles Jarrell (“Jarrell”), counsel for Law Rocks, responded to Shocked’s claims by email. Specifically, Jarrell noted that “Law Rocks has not distributed or shared the video of your band’s performance, and will not do so. The footage will be discarded.” Respondent Evidence, Exh. 8.
31. On January 21, 2023, Shocked filed this claim (Dkt. 1) and amended it on February 15, 2023 (Claim).
32. Between January 20, 2023, and January 30, 2023, Shocked and Kastner exchanged a series of emails regarding the recording of her performance at the NYC Event. Claimant Evidence at Emails 57-70. Those emails evidence the fact that Kastner was representing Shocked in connection with her dispute with Law Rocks concerning the Video. For instance, in a January 20, 2023 email to Shocked, Kastner stated, “... I clearly advised you not to push this.” *Id.* at Email 64.
33. On January 31, 2023, Kastner emailed Jarrell and asked him to “contact me at your earliest opportunity to discuss your email below to my client Michelle Shocked.” *Id.* at Email 71. Jarrell testified that it was his understanding that Kastner was representing Shocked with respect to the dispute over the recording of Shocked’s performance. Trans. at 2:38:13-2:39:34.
34. Shortly after emailing Jarrell, Kastner sent the following email to Shocked at 10:44 AM:
- “I think the simple approach is to point out that on 10/22/22, Omi agreed to exclude footage of your performance from their channel and their downloads. If they will honor that agreement and acknowledge your exclusive ownership of copyright in the musical compositions, the sound recordings of your performance and send you the footage, you will withdraw your CCB claim.”
- Claimant Evidence at Email 72.
35. Jarrell and Kastner spoke by phone later that morning. Respondent Position Statement at 6. After the call, Kastner emailed Shocked and stated, “[t]hey have agreed to erase all footage of your performance and not post anything anywhere but they will not give you a copy. . . . I strongly recommend that you let it die here and withdraw your CCB claim.” Claimant Evidence at Email 75.
36. At 1:12 PM, Jarrell emailed Kastner memorializing the call and stated:
- “This will confirm that Law Rocks has, or promptly will, permanently and completely discard any and all audio or video recordings or footage of your client’s performance at the Law Rocks event . . . I can confirm that Law Rocks has not shared, distributed or posted the footage of your client’s performance with anyone since the event.”
- Id.* at Email 76. In a series of emails between 1:18 and 3:20 PM, Kastner implored Shocked to accept the agreement. In these emails, Shocked re-asserted her desire to receive the “raw footage” from Law Rocks as well as her belief that she owned the footage. Kastner advised Shocked that “I disagree and once again, you are overruling my strong advice. The footage itself, is not in my opinion, your property.” Kastner further stated, “I do not think you will win this at the CCB.” *Id.* at Emails 77-87.

37. At 4:06 PM, Claimant sent another demand letter to Jarrell seeking the Video of the event and asserting her ownership of the recording. *Id.* at Email 88.
38. At 5:16 PM, Kastner emailed Jarrell to state: “I no longer represent Ms Shocked in this matter.” *Id.* at Email 90.
39. At 6:27 PM, Kastner emailed Shocked to formally withdraw his representation and stated “. . . I cannot in good conscience represent a client who refuses to consider my advice. . . . To be clear again, I do not believe that your argument is legally supportable. Furthermore, I believe that the resolution I had negotiated was a fair resolution and one that was in the best interest of your reputation in the Copyright Law community.” *Id.* at Email 92.
40. Respondent had no further communications with Shocked or Kastner until it received notification of the filing of this claim on March 22, 2023. Respondent Position Statement at 7. After Jarrell learned of Shocked’s filing of this proceeding, he wrote to Kastner, “[Shocked] claims that you withdrew from representing her because you were ‘intimidated’ when in fact you confirmed to me in writing that she was proceeding ‘against [your] advice.’” Claimant Evidence at Email 100. Jarrell also warned Kastner to preserve all documents in this matter as Law Rocks would be seeking discovery from Kastner. *Id.* Kastner responded that he took no part in preparing or filing Shocked’s claim before the Board and had not withdrawn from representing Shocked because he was intimidated. *Id.* at Email 101. When Kastner informed Shocked of Jarrell’s demand to preserve documents relevant to this proceeding, Shocked advised Kastner to ignore the request to preserve documents. *Id.* at Email 105.
41. The evidence submitted by Shocked demonstrates that despite the strong and repeated advice of her lawyer, whom she called a “respected law professional,” Shocked filed and pursued this claim. Trans. at 53:57-54:50.
42. Law Rocks has not distributed, sold, posted, disseminated, published, or copied any video of Shocked’s performance from the NYC Event. Respondent Position Statement at 2; Crawford Witness Statement ¶ 16. Nor has it earned any money from the recording of Shocked’s performance. Trans. at 2:19:57-2:20:12.
43. Law Rocks has ensured that all video recordings of Shocked’s performance have been permanently discarded and destroyed. Crawford testified that she communicated with Carden on several occasions and has received confirmation in writing that all files were deleted. Trans. at 2:18:40-2:18:53.
44. Jarrell testified that he had been assured that the recordings were destroyed. *Id.* at 2:40:57-2:41:08. In an email dated January 31, 2023, Jarrell asked Kastner to inform him of any reference to “your client or her performance in any Law Rocks’ materials” so that they could remove such references. Claimant Evidence at Email 76. Jarrell testified that he never received any notification from Kastner or Shocked that there were references to Shocked or her performance in any of Law Rocks’ materials. Trans. at 2:42:30-55.

45. Shocked did not search for or see the allegedly infringing Video on YouTube or any other online platform. Further, no other individual or entity has informed Shocked that the footage is available anywhere, either online or otherwise. *Id.* at 41:34-42:30, 44:27-44:34.
46. No evidence that the Video of Shocked's performance was distributed, sold, copied, displayed or otherwise used was presented to the Board during the course of this proceeding.

Copyright Claims Board



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0024

August 22, 2024

Michelle Shocked

CLAIMANT

v.

Law Rocks

RESPONDENT

ORDER REGARDING CLAIMANT'S OBJECTIONS AND PROPOSED ADDITIONS TO THE PROPOSED STATEMENT OF FACTS

The Board issued a Proposed Statement of Facts on June 26, 2024 (Dkt. 45; "Proposed Facts"). Claimant submitted a response enumerating objections and proposed additions to the Proposed Facts on July 17, 2024 (Dkt. 46; "Objections"). The Board has reviewed the Objections and has determined:

- The **Objection to Proposed Fact 1** is contrary to the written evidence submitted to the Board. *See* Respondent Evidence, Exh. 1 (listing "Drew Kastner" as band member #4) & Exh. 3 (second band member listed as "Drew Kastner <https://www.linkedin.com/in/drew-kastner-478b9614>").
- **Proposed Additional Fact 1** is not in evidence because the Interrogatory Responses were not submitted to the Board. Even if it were in evidence, this proposed fact would not change the final determination in this proceeding.
- **Proposed Additional Facts 2, 5, 6, 7 and 8**, even if true, are irrelevant to the final determination in this proceeding.
- **Proposed Additional Fact 3** is not a fact but expresses an opinion of the Claimant, and it does not change the final determination in this proceeding.
- **Proposed Additional Fact 4** is not a fact but expresses an opinion of the Claimant, and it does not change the final determination in this proceeding. In addition, it is not in evidence because the Interrogatory Responses were not submitted to the Board, and Claimant's Amended Position Statement (Dkt. 40) does not support this statement.