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8 CAN'T STOP PRODUCTIONS AND
9 SCORPIO MUSIC (BLACK SCORPIO) S.A.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

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

Case No. '11CV1557 BTM RBB

15 Plaintiff,

COMPLAINT FOR DECLARATORY
RELIEF

16 vs.

17 VICTOR WILLIS

18 Defendant.
19 _____/

20 By this action, Plaintiffs Scorpio Music, S.A. and Can't Stop Productions, Inc., seek
21 a declaration of this Court that Defendant Victor Willis' attempt to exercise rights of
22 recapture pursuant to Section 203(a) of the United States Copyright Act (17 U. S. C. §
23 203(a)) is void and of no force or effect and in support thereof allege as follows:

24 The Parties

25 1. Plaintiff Scorpio Music (Black Scorpio), S.A. ("Scorpio Music") is a corporation
26 duly organized and existing under the laws of the nation of France and having as its
27 principal place of business at 92, Avenue Kleber, 75116 Paris, France. At all relevant

1 times Scorpio Music was, and continues to be a company engaged in the business of
2 publishing and otherwise commercially exploiting musical compositions.

3 2. Plaintiff Can't Stop Productions, Inc. ("Can't Stop") is a corporation duly
4 organized and existing under the laws of the State of New York and having its principal
5 place of business at 1995 Broadway, 16th Floor, New York, New York 10023. At all
6 relevant times Can't Stop, through its division, Can't Stop Music, was and continues to
7 be a company engaged in the business of publishing and otherwise commercially
8 exploiting musical compositions.

9 3. Defendant Victor Willis, upon information and belief, is a citizen of the
10 State of California residing at 9115 Judicial Drive, No. 4521, San Diego, California
11 92122

12 4. Plaintiff Can't Stop, at all relevant times was and continues to be the
13 exclusive sub-publisher and administrator in the United States of musical compositions
14 published and owned by Scorpio Music. In that capacity Can't Stop represents
15 Scorpio Music in the commercial exploitation of Scorpio Music's musical compositions,
16 including enforcing Scorpio Music's rights in those compositions.

17
18 Jurisdiction and Venue

19
20 5. The jurisdiction of this Court is based upon 28 U.S.C. Sections 1331 and
21 1338(a) in that the controversy arises under an Act of Congress relating to copyright;
22 to wit, the copyright laws of the United States (17 U.S.C. Section 101 *et seq.*). This
23 action, to the extent that it seeks declaratory relief, is also brought under 28 U.S.C.
24 Section 2201 and Rule 57 of the Federal Rules of Civil Procedure.

1 Defendant Willis Wrongly Seeks to Terminate Copyright Ownership

2
3 14. In January 2011 defendant Willis served upon Can't Stop a "Notice of
4 Termination of Post 1977 Grants of Copyright on Certain Works of Victor Willis" (the
5 "Notice"). A true and exact copy of the Notice is attached hereto as Exhibit "A" and
6 incorporated herein by this reference.

7 15. The Notice purports to terminate the rights of, among others, Scorpio Music
8 and its agent, Can't Stop, in certain of the compositions (the "Compositions") which are
9 enumerated in Schedule A of the Notice.

10 16. The Notice incorrectly states that Defendant Willis is "the author of the
11 Works and the sole grantor of the rights under the Agreements," and wrongfully
12 suggests that the entire copyright in all the Compositions should be reassigned to him
13 at the expiration of the thirty- five year period set forth in the Copyright Law for songs in
14 which the grant of a transfer of copyright was allegedly executed by defendant Willis on
15 or after January 1, 1978.

16
17 Defendant Willis Refuses to Withdraw Notice Despite Can't Stop's
18 Response Setting Forth the Errors in His Position

19
20 17. Can't Stop responded to the Notice by writing to Defendant Willis' attorney
21 explaining that Defendant Willis had no legitimate right to seek the termination of Scorpio
22 Music's copyright ownership, and demanding that the Notice be withdrawn.

23 18. Defendant Willis, through his attorney, has refused to withdraw the Notice.

24 19. That refusal is contrary to the facts and the governing law.

1 Defendant Willis Cannot Terminate Copyright Assignment in Joint Work

2 20. The Compositions, in their English language versions, are joint works written
3 by more than one person.

4 21. In accordance with the Copyright Law joint works are considered as a "unitary
5 whole" with each contributor's part "merged into inseparable or interdependent parts of a
6 unitary whole" 17 U.S.C. Section 101.

7 22. Each of writers of the Compositions granted their copyright interests, if any,
8 either to Can't Stop, as the agent of Scorpio Music, or to Scorpio Music itself.

9 23. While defendant Willis signed the Agreements, the other writers of the
10 Compositions signed songwriter agreements with Scorpio Music.

11 24. 17 U.S.C. Section 203(a)(1) provides that "[i]n the case of a grant executed by
12 two or more authors of a joint work, termination of the grant may be effected by a majority
13 of the authors who executed it."

14 25. Defendant Willis, simply because he signed documents different from the ones
15 signed by the other authors of the same joint works, is neither the sole grantor nor only
16 author of any of the Compositions and hence, he is not a "majority of authors." As a result,
17 defendant Willis could not terminate the copyright assignment for any of the Compositions
18 without at least one other writer joining with him for such Composition. Willis' attempt to
19 do so is, therefore, void as to all of the Compositions.

20 -
21 Alternatively, Can't Stop Employed Defendant Willis as a Writer for Hire and He
22 Therefore Has No Rights in Copyrights

23
24 26. In the alternative, pursuant to the Agreements, Can't Stop employed defendant
25 Willis and, hence, he is a writer for hire with no right in the copyrights to the Compositions
26 for which he provided some English lyrics.

1 27. In addition to the Agreements establishing defendant Willis' "writer for hire"
2 status, the circumstances pursuant to which defendant Willis rendered his services confirm
3 that he functioned as an employee of Can't Stop.

4 28. Can't Stop, as part of its regular business of representing Scorpio Music in the
5 United States, supervised and controlled the manner and means by which defendant Willis
6 worked, including its location and duration, as well as the substance and meaning of the
7 lyrics to be provided.

8 29. The Compositions, with some of the English lyrics provided by defendant
9 Willis, appeared as parts of record albums (i.e., collective works), further qualifying
10 defendant Willis' contribution to the Compositions as being works made for hire pursuant
11 to the provisions of 17 U.S.C. Section 101(2).

12 30. Section 203(a) of the U. S. Copyright Act, under which Willis purports to
13 exercise his rights, specifically excludes works made for hire.

14
15 Defendant Willis' Claim is Time-Barred

16
17 31. Defendant Willis entered into the Agreements more than thirty years ago.

18 32. During this period Can't Stop, pursuant to the terms of the Agreements, has
19 paid him hundreds of thousands of dollars.

20 33. Equitable concepts such as laches and estoppel, as well as the relevant statute
21 of limitations, preclude any attempt by defendant Willis to contest the validity of his status
22 as a writer for hire.

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Even If Defendant Willis Has Recapture Rights He Cannot Obtain a Greater Proportion of the Copyright in the Compositions Than His Percentage Set Forth in the Agreements

34. Upon information and belief, defendant Willis claims the right to recapture at least half (i.e., fifty percent) of the copyrights in each of the Compositions.

35. Upon information and belief, defendant Willis ignores the existence of other people listed as writers of the Compositions to claim that he, alone, wrote all of their lyrics.

36. Although, as noted above, defendant Willis has no right to any portion of the copyrights, and the statute of limitations and equitable doctrines preclude him from disputing authorship attribution, in the event it is found otherwise, defendant Willis' maximum reversionary share of the copyright should be governed by, and be equal to, the percentage of royalties set forth in the Agreements which defendant Willis received as his compensation for services rendered.

37. The percentage referred to in paragraph 36, above, ranges from 12 to 20%.

Defendant Willis Cannot Terminate Existing Licenses and Derivative Works

38. Even if Willis is found to have the right to terminate his alleged copyright transfer relating to the Compositions, he is precluded from terminating any licenses issued, or derivative works authorized, by Plaintiffs, which existed prior to the termination of the copyright assignment.

Claim

39. Plaintiff Can't Stop repeats and realleges each and every allegation set forth in paragraphs 1 through 39 hereof with the same force and effect as if more fully set forth herein.

1 40. In order to resolve this controversy, plaintiff Can't Stop requests, pursuant to
2 28 U.S.C. Section 2201 and, Rule 57 of the Federal Rules of Civil Procedure, that this
3 Court declare the respective rights and duties of the parties in this matter and, in particular,
4 that the Court (a) declare that the Notice is invalid, (b) that the Notice should be voided *ab*
5 *initio*, and (c) that it be held that defendant Willis cannot recover any portion of the
6 copyrights in the Compositions.

7 Declaration

8 41. An actual case and controversy exists sufficient for this Court to declare the
9 rights and remedies of the parties in that there is a dispute between the parties concerning
10 whether defendant Willis can terminate the rights of Can't Stop and Scorpio Music in the
11 Compositions.

12 42. Plaintiffs Can't Stop and Scorpio Music have the requisite standing to request
13 this declaration since they are the United States sub-publisher and worldwide publisher,
14 respectively, of the Compositions, and Scorpio Music will lose a portion of its copyright
15 ownership in the United States in the Compositions in the event that defendant Willis
16 prevails.

17 43. This controversy is ripe for determination at this time because, according to the
18 Copyright Law, ownership rights vested on the date the Notice was served and the
19 termination of copyrights, absent a declaration by the Court to the contrary, will become
20 effective beginning at the end of thirty-five years from the date of the Agreements. In the
21 case of specific Compositions, the effective dates, depending on the particular
22 Composition, begin in 2013.

23 44. The threat of the termination of a portion of the United States copyright in the
24 Compositions casts a pall on the assets of the Compositions, diminishes their value, and
25 complicates the ability of Can't Stop to commercially exploit them.

26 45. A decision on this issue is therefore needed as soon as possible.

1 46. Plaintiffs have no adequate remedy at law.

2
3 WHEREFORE, Plaintiffs Can't Stop Productions, Inc. and Scorpio Music
4 (Black Scorpio) S.A. pray that this Court:

5 a. Render a declaratory judgment providing that defendant Victor Willis has no
6 right, title or interest in the copyrights to the Compositions;

7 b. Enter an order requiring defendant Willis to withdraw the Notice of
8 Termination and submit to the United States Copyright Office whatever written document(s)
9 it requires to effectuate such withdrawal, with copies to Plaintiffs;

10 c. Enter an order enjoining defendant Victor Willis, or any of his agents,
11 licensees, representatives or assignees, from making any claims to the copyrights in the
12 Compositions or in any other manner encumbering or restricting Can't Stop Productions,
13 Inc.'s and Scorpio Music (Black Scorpio) S.A.'s rights in the Compositions.

14 d. In the alternative, and in the event defendant Willis is found to have a right
15 to terminate the rights of Can't Stop Productions, Inc. and Scorpio Music (Black Scorpio)
16 S.A. in the Compositions, that such reversion of rights to defendant Willis (i) be limited to
17 the same percentage ownership as he receives as compensation relating to the
18 Compositions and as set forth in the Agreements; and (ii) that defendant Willis be enjoined
19 from terminating any licenses issued, or derivative works authorized, by Plaintiffs, which
20 existed prior to the termination of the copyright assignment.

21 e. Award plaintiff Can't Stop Productions, Inc. and Scorpio Music (Black
22 Scorpio) S.A. their costs and disbursements incurred in this suit, together with a
23 reasonable allowance for counsel fees as provided by Section 505 of the Copyright Act,
24 17 U.S.C. Section 505.

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f. Grant such other and further relief as the Court may deem just and proper.

Dated: July 14, 2011

LAW OFFICES OF ROBERT S. BESSER

By 
ROBERT S. BESSER

Attorneys for Plaintiffs, CAN'T STOP
PRODUCTIONS AND SCORPIO MUSIC
(BLACK SCORPIO) S.A.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

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

(b) County of Residence of First Listed Plaintiff Paris, France
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

LAW OFFICES OF ROBERT S. BESSER (310) 394-6611
1221 Second Street, Third Floor, Santa Monica, CA 90401

DEFENDANTS

VICTOR WILLIS

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV1557 BTM RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

PERSONAL INJURY	PERSONAL INJURY	PERSONAL INJURY	PERSONAL INJURY	PERSONAL INJURY	PERSONAL INJURY
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input checked="" type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 555 Prison Condition			<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare		<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Recopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C. Sections 101 et seq.

Brief description of cause:
Declaratory relief re attempt by Defendant to recapture copyrights

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
07/14/2011

SIGNATURE OF ATTORNEY OF RECORD
RTS

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____