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**July 28, 2020 Testimony to the Subcommittee on Intellectual Property hearing entitled
“How Does the DMCA Contemplate Limitations and Exceptions Like Fair Use?”**

Chairman Tillis, Senator Coons and members of the subcommittee. I thank you for inviting me to participate in today’s hearing. My name is Rick Beato.

I have been asked to come here today and discuss the issue of Fair Use related to my work as a content creator on YouTube.

For four years I have developed an educational YouTube channel I call “Everything Music.” In this time, I have steadily built an international audience of 1.7 million subscribers and my channel has had over 200 million views. I have created 750 videos on topics ranging from music theory, ear training and improvisation, to film scoring, production, copyright, interviews, and a series of 94 videos entitled “What Makes This Song Great?” In this series I explore the individual elements of famous songs, examining the melodic and harmonic structure along with its production technique to answer the question of what actually makes a song great.

When I began the series, I uploaded the episodes knowing that the videos would be instantly recognized by YouTube’s Content ID algorithm and demonetized. A demonetized video means that the artist or copyright holder receives all the ad revenue generated from the video that would normally go to the content creator. Some artists like the Eagles, Jimi Hendrix and Guns N’ Roses are what I refer to as “blockers”. Blockers are artists who have a zero use policy for ANY of their work, regardless of the length or purpose of the excerpt. I have never sought to claim Fair Use for any of these videos, even though a case could be made that I was providing education through commentary, criticism, research and teaching based on the Fair Use policy defined by US law.

From 1987 to 1992 I was an Associate Professor of Music at Ithaca College. In those days just, as it is today, the use of recorded music for analysis in classroom instruction was commonly used and protected under Fair Use. YouTube, in many ways, is the new university. It is a place where people go to learn things. The do-it-yourselfers who want to fix their hot water heater, consumers who want to compare cameras, or students who want to simply learn how to play a song. In my view, this is the most important function of YouTube.

As a songwriter I’ve been signed to multiple publishing deals since 1992, most recently Sony ATV. I’ve had songs as a writer on many records including a number one, million-selling Country song as recently as 2013. Out of my 750 YouTube videos, 254 have been demonetized and 43

have been taken down or blocked. For the record, I have never had a copyright strike filed against me by YouTube.

This brings me back to Fair Use. Two elements of Fair Use that I believe covers teaching videos have to do with the amount of the copyrighted material used and whether or not it harms the copyright holder's ability to profit from their original work. I would argue that if a video is using brief excerpts of music to demonstrate a compositional technique it should be covered under the Fair Use guidelines. The rules governing the application and interpretation of Fair Use should be shouldered by all parties and not only the content creator. The concept of Fair Use is meaningless when frivolous or random interpretations allow a team of searchers, typically employed by a major label, harass creators for content that falls under the legal definition of Fair Use. A clear-cut case of piracy is one thing, but there have to be exemptions for Fair Use.

One of my recent music theory videos called "The Mixolydian Mode" was manually claimed by Sony ATV because I played ten seconds of a Beatles song on my acoustic guitar to demonstrate how the melody is derived from this scale. This is an obvious example of Fair Use. In response, I made a video entitled "The Music Industry SCAM to Ripoff YouTubers." The video describes how record labels employ Content ID farms, essentially collection agencies, to manually claim YouTube videos for demonetization. Don Henley testified to this before this very Committee. My video received over 500,000 views within 24 hours and the claim was then released by Sony without me even filing a dispute. I believe the claim was released because I have a channel with over one and a half million subscribers and hence have a platform to air these grievances. Creators with smaller audiences are not so fortunate.

I accepted the invitation to testify today because we need to find solutions to these problems. In the case of Fair Use, content creators should be protected from frivolous demonetizations. I would like to propose what I call a Fair Use Registry, where one could get a certification as a good actor similar to Twitter's blue checkmark. When a video is posted, it can be checked against the database of Certified Fair Users. The content creator would then be whitelisted for use. YouTube already sets benchmark's for channel monetization. The Fair Use Registry would work along the same lines.

I reason that I create videos, such as those in my "What Makes This Song Great?" series, is to introduce classic songs to new audiences, and reinvigorate these same songs.

Thank you so much for your time. I would be happy to answer any questions you have.