From:	Bernardo Nelson <dad2[redacted]
Sent:	Friday, July 4, 2014 5:42 PM
To:	ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject:	Consent Decree

I am emailing on behalf of someone who chooses to remain anonymous.

Chief, Litigation III Section
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6/24/2014

To the Antitrust Division of the DOJ,

I write this letter the day before ASCAP President Paul Williams speaks before the Judiciary Subcommittee on Courts, Intellectual Property and the Internet. I'm sure Mr. Williams will speak in favor of revising the Consent Decrees of ASCAP and BMI so it is more consistent and fair with today's technology and the music licensing system. I am confident he will make multiple valid points that benefit all parties. This letter is not about the points that are common sense and well overdue, as the majority of songwriters and publishers will agree with them overwhelmingly. Instead, I write this letter to shed some light on business practices that may not be brought to the attention to the Subcommittee or DOJ, given the unethical and debatably illegal nature of them.

I write this letter anonymously as its contents may jeopardize where I work in the music industry. I have several years of experience, as well as knowledge of the ASCAP / BMI business practices that may not be publically shared with writer and publisher members, or the DOJ of Subcommittee.
These policies should be addressed, debated, and revised within the Consent Decree. The policies listed below that I and (I'm sure) hundreds of thousands of ASCAP / BMI members fear may be overlooked by the DOJ since ASCAP/BMI executives or Board Members, may omit them from all testimony and may not consider them relevant, but are highly important for the music middle class. I believe this is an opportunity to make these policies right for all writers and publishers, and not just the proposed changes in place now.

I would like to bring to the aforementioned parties' attention ASCAP and BMI's **Royalty Premium Policy**. Both ASCAP and BMI pay out substantial financial premiums based strictly on having a top song playing on the radio in a given genre (ie. country radio premium, urban radio premium, top 40 premium, etc); or, that are placed on the highest paying/ highest rated shows on network, cable and local television. To be clear, these premiums are paid as separate line items on royalty statements and work outside of the regular royalty distribution formula that the rest of he writer and publisher member population are paid by.

In the spirit of preventing the ASCAP/BMI to not act as a monopoly, the DOJ should initiate a serious and progressive discussion to redirect this Royalty Premium income. As a reminder, the source of this income comes from the blanket

licensing fees from various broadcasters and websites that expect their annual fee to go out to as many songwriters and publishers as possible. These licensing fees should be processed by ASCAP and BMI under a consistent set of rules, rates, scale and policies each PRO sets so that all members, within each PRO, are being paid within the same scope. Writers with big hits should naturally earn more, but there should not be extra premium money paid on top of that huge sum and should go through an appropriate system set up for all members fairly. There is also a conflict of interest as many of the ASCAP Board of Directors fit the description as a recipient of these Royalty Premiums. Serious music creators understand the music industry is high risk and that more successful people will earn more income, (ie. free market), however, that doesn't mean there should also be an exponentially higher side pot for higher earners

ASCAP and BMI have used this Royalty Premium money as a membership tactic in an attempt to keep their high earning writers on their respective rosters in order to keep the competition high between PROs.
There has also been a history of non-recoupable advances to higher earning writers in order to keep them as a member when they threaten to switch PRO. These sums have been paid to high profile members quietly and is another practice of how organizations that operate based on Copyright Law are breaking it by sending money to members for competitive reasons as opposed to earning it from public performance.

Lastly, the employees at ASCAP and BMI that you don't get to meet, who do the actual work, are extremely underpaid and have less and less co workers with them every year. ASCAP, and possibly BMI have outsourced a large amount of their labor to foreign countries, leading to the decrease of American jobs. This causes a harsh cycle of increased royalty errors from the overseas laborers, an increase of domestic man hours to fix these errors, which leads to unhappy members and a short staffed US Offices in NY, LA and Nashville, which leads to executives trying to figure out how to increase revenue to make members happy, which leads to more overseas and less domestic jobs.

Neither practice of **Royalty Premiums** nor **Non Recoupable Advances** ("Special Payments") nor increasing **hiring overseas** should exist and/or should be legal given the fact there are only three different companies in the United States that are responsible for the distribution of music performance royalties. This all correlates back to the very executives you are speaking to that are out of touch with their employees, and out of touch with the highly populated music middle class.

To ASCAP and BMI's credit, they have a lot of it right with the new Consent Decree revision suggestions, they just left out a few things close to a million people would want.

Thank you for your time.