

August 6, 2014

Chief, Litigation III Section  
Antitrust Division  
U.S. Department of Justice  
450 5th Street NW, Suite 4000  
Washington, DC 20001

***RE: Request for Public Comments on U.S. Department of Justice Consent Decree Review***

Thank you for reviewing these comments that are made on behalf of composers, songwriters and artists. I am a film composer and songwriter who has written hit songs and orchestral music scores for block buster movies such as Happy Feet Two, Ice Age 4, and Frankenweenie. I have won or been nominated for many awards for my compositions including a coveted Ivor Novello Award and a World Soundtrack Award.

Besides my passionate advocacy for music rights and intellectual property in general, I have dedicated myself to aggregating composers onto an Internet platform called Hollywood Elite Composers and Artists This Company, which equitably provides an online licensing portal for music to be discovered, licensed and tracked. Our ground-breaking initiative allows creators to keep 100% ownership and control of their copyrights while we only take a small 20% commission on just the license fees we procure. Hollywood Elite Music is "For Musicians By Musicians," and "Our Artistic Strength Is Backed Up By Our Collective Muscle".

**A. The consent decrees must be abolished**

**1) They restricts free trade negotiations**

The American Society of Composers, Authors and Publishers ("ASCAP") and Broadcast Music, Inc. ("BMI") are bound by the consent decrees, which restrict them from withholding their product (a music license) when negotiating for license fees. This makes it impossible for the PROs to obtain fair market value for these licenses.

**2) Companies are exploiting loopholes created by the consent decrees**

Companies have deliberately used the rate court process to delay paying any compensation to the PROs. By offering inadequately small amounts to the PROs, negotiations between the parties inevitably fail. The rate courts then take a year or more to decide on a rate, thus allowing companies to create their businesses on the backs of musicians without paying a penny for the music.

### **3) The rate courts do not set fair license fees**

The rate courts do not grant licenses fees reflecting the licenses' true market value. For example, the ASCAP rate court set the rate for streaming musical compositions at one twelfth of the royalty rate paid to record labels for the same exact uses.<sup>1</sup> Pandora pays merely 1.85% of its annual revenue to ASCAP.<sup>2</sup> Meanwhile, the service paid 49% of its revenue to record companies for the use of master recordings in 2013.<sup>3</sup>

### **4) Synchronization licenses show the effectiveness of free negotiation**

The industry custom for "sync" licenses is to pay an equal amount for both the musical composition and sound recording, recognizing that songwriters and recording artists are equally integral to music and deserve equal compensation. Why should performing rights be hampered in this way when this right is equally valuable?

### **5) The major publishers will abandon ship if the consent decrees are not heavily modified or abolished**

Because the consent decree is stifling fair trade, the major publishers are threatening to withdraw from the PROs in order to secure an advantage for themselves. This might adversely affect their members who will not have the benefits of transparency offered by the PROs. Further, this could destroy the whole PRO system to the long-term detriment of the creators at the very heart of the industry who are not represented by these companies.

### **6) Dividing us will conquer us**

The American PROs have room for improvement, but most other countries trust the job of collecting music royalties to only one PRO. America does not trust the ideal of a nonprofit collection agency that exists solely to be a conduit for collecting and passing on music royalties transparently to both publishers and creators (songwriters, composers and lyricists). A consent decree is NOT a good way to ensure transparency or protect performance rights, it only serves to restrict fair trade and encourage abuse.

---

<sup>1</sup> Ed Christman, *New Legislation Seeks to Modernize Copyright Act to Benefit Songwriters*, BILLBOARD, Feb. 25, 2014, <http://www.billboard.com/biz/articles/news/publishing/5915717/new-legislation-seeks-to-modernize-copyright-act-to-benefit>.

<sup>2</sup> Ed Christman, *Rate Court Judge Rules Pandora Will Pay ASCAP 1.85 Percent Annual Revenue*, THE HOLLYWOOD REPORTER, Mar. 17, 2014, <http://www.hollywoodreporter.com/news/rate-court-judge-rules-pandora-689221>.

<sup>3</sup> Ben Sisario, *Pandora Suit May Upend Century-Old Royalty Plan*, THE NEW YORK TIMES, Feb. 13, 2014, <http://www.nytimes.com/2014/02/14/business/media/pandora-suit-may-upend-century-old-royalty-plan.html>.

## 7) **Capitalism or bureaucracy?**

In theory, more administrators for performing rights might mean more competition. However, in practice it means more fragmentation and inconvenience for third parties, reducing efficiencies and increasing transactions costs of licensing these rights, which come directly out of musicians' pockets.

**IN SUMMARY, the consent decrees must go because they are:**

- **Outdated** – they were first entered into in 1941 and they haven't been changed to reflect the current digital landscape.
- **Unsophisticated** – they were designed to cope with an industry before the Internet or even cable TV! We have computers and sophisticated technology to assist us now.
- **Ineffective** – it is clear that they are harming the very songwriters and composers they were designed to protect. Songwriters and composers are not being adequately paid for their works. If Publishers start collecting performance royalties, then musicians have no way of knowing if they are being accounted to correctly without individually auditing them, and nobody outside of the top earning 1% of musicians has the time and resources to do that.
- **Unfair** – Not all PROs are bound by the consent decrees. ASCAP and BMI are subject to consent decrees, but NOT SESAC and all other direct licensing companies.
- **Inequitable** – we have clear evidence that the rate courts do not protect the best interests of the music industry.

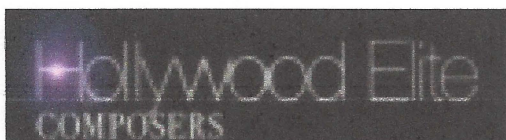
## **B. Conclusion**

Anything that takes away songwriters' or composers' power of approval cannot be tolerated. They must be free to negotiate for the fair value of their copyrights in a free market. We need to protect creators and nurture their talent for innovation.



Respectfully submitted,

Hélène Muddiman  
Hollywood Elite Composers  
16659 Addison Street  
Encino, CA 91436  
(310 430 8570)



IMDB: [www.imdb.com/name/nm1055902/](http://www.imdb.com/name/nm1055902/)

Website: [www.helenemuddiman.com](http://www.helenemuddiman.com)

Hélène Muddiman is an Ivor Novello nominated Composer and a World Soundtrack Award Discovery of the Year nominee.

Winner of the Excellence in Music Best Score Award 2009 and The Moondance Award. And top 5 hit songwriter.

I am a film composer/songwriter/artist and I second these comments

Signed

Print

Website address or agent for contact (Optional)