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VIA U.S. MAIL AND EMAIL

Antitrust Division
U.S. Department of Justice
50 5th Street NW, Suite 4000
Washington, DC 20001
Attn: Renata B. Hesse

Re: U.S. Department of Justice Consent Decree Review

Dear Ms. Hesse:

I am following-up on Dina La Polt's letter to you as of August 19, 2015 and wish to express both my enthusiastic support of her comments and additional thoughts that may or may not have been brought to your attention.

I have been a practicing music attorney for many years representing major name talent, composers, and songwriters.

It is certainly appreciated that the DOJ has taken on the effort to review the consent decree which hopefully will in the long run benefit songwriters and the public. However, it has become clear to me that the DOJ may not always have a clear understanding of the practical way licensing has been working in the music industry. This is clearly understandable as that is not what the DOJ does 24/7 but it is what I and a great number of my colleagues do 24/7.

I have been informed that the DOJ is considering requiring the PRO's to license entire compositions rather than only the portion they

represent where there are more than one songwriter on a particular song that do not belong to the same society.

Notwithstanding what I believe to be the DOJ's belief that the historical practice of copyright owners and the PRO's has been that they license the full work or "100%" licenses, it is simply not ever been true since the 1940's when BMI was organized to compete with ASCAP. Each society has always licensed only what they control in their repertory, which is actually the "works" in their respective catalogue, which in many instances may only be a fraction of the whole song. They only have the right to license that portion of the song the publisher was able to grant pursuant to its agreement with the songwriter. The publisher and the songwriter each affiliate with the society to which the songwriter belongs. Such affiliation contractually grants only non-exclusive rights and only their respective percentage interest in the copyright to the PRO for the PRO to license users.

Therefore ASCAP or BMI can only license that portion of a "work" that they have been authorized, by contract, to represent. As a matter of fact, fractional licensing has existed for at least 75 years. For it to be otherwise would mean a society that does not represent a publisher and songwriter would be granting a license on that non-affiliated publisher's or songwriter's behalf when that has never been anyone's intent.

As a practical matter, probably 95% of all performing licensees opt to use the blanket license offered by each society, therefore it would be a very rare circumstance in which the licensee has a license from one society but could not obtain the license for the other portion of the song from the other society.

That just has not been a problem over the years and has functioned very well to everybody's benefit. Therefore, the old adage still applies: "if it ain't broke, don't fix it."

This also follows the longstanding practice of co-copyright owners in the licensing of synch rights. Each party separately licenses to the user their own percentage of the copyright. This likewise has always worked and continues to work very well.

I do appreciate your consideration of my comments and am always willing to answer any questions concerning this matter.

Respectfully submitted,

Jay L. Cooper

JLC/as

cc: Ethan C. Glass (via email)
Dina LaPolt (via email)