



**Comments from**

**Bart Herbison**

**Executive Director**

**Nashville Songwriters Association International**

**on**

***“PRO Licensing of Jointly Owned Works”***

**at the request of the**

**United States Department of Justice Antitrust Division**

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The Nashville Songwriters Association International (NSAI) is a trade association for American songwriters and does not in any way collect royalties on behalf of any of its members. As such, we represent songwriters who are members of all American Performance Rights Organizations in all genres of music. We believe that we have a unique perspective on the practical implications involved with this issue and would like to submit comments to that extent.

The evolution of the profession of songwriting has been a unique one. When I became Executive Director of NSAI in 1997, the profession was at its apex. Nashville publishers alone signed several thousand professional songwriters. Consumers still bought tapes and CDs were rapidly growing in popularity. People wanted to own not just singles but the entire album including cover art and liner notes. For songwriters, that meant getting occasional album cuts, and not the big radio hit, could still provide enough income to sustain a family.

The advent of a new century brought with it a significant changes in that model. Internet music piracy and file sharing became prevalent and while people still wanted to own the whole album, they no longer had to pay for it since they could download it on their home computer for free. Album sales declined dramatically and over time mechanical royalties fell by 70% or more for most songwriters. Those whose livelihood had been predominantly supported by album cuts were no longer able to sustain a living on songwriting. While songwriters had always strived for the big radio single, getting that single was now essential in order to pay the bills from performance royalties. Those songwriters religiously marked the calendar in anticipation of the arrival of their PRO checks.

Recent years have brought another paradigm shift for songwriters. The launch of online streaming services ushered in an age of “rate court” decisions resulting in micro-penny rates per spin. The consumers who had been obtaining music free through illegal file sharing sites, now quickly embraced the free legal streaming model. Today, as more and more consumers move away from broadcast radio toward streaming, songwriters face a devastating change in royalty income in the digital music industry landscape. At micro-penny rates, the profession of songwriting in the United States simply cannot survive.

ASCAP and BMI have different royalty payment schedules, distribution formulas and other affiliation terms and the actual royalty payments for different categories of use can be significant. Songwriters select their chosen PRO after careful consideration of both these factors and the PRO member representatives with whom they will be working during that relationship. In the current environment, it cannot be overstated the extent to which a songwriter depends on his/her PRO. PRO checks are what pay the electric bill and buy food for the dinner table.

While songwriters very deliberately choose the PRO with whom they prefer to affiliate, their PRO choice in no way presently influences the collaborators they choose. Co-writing is an important part of the creative process and songwriters very often collaborate with writers affiliated with a different PRO with absolutely no regard for the other’s affiliation. In the creative process, it simply hasn’t and shouldn’t matter. The system has worked very efficiently to allow for each songwriter’s ownership portion to be licensed by his/her chosen PRO with the result of

royalties owed to that owner being distributed by the same. A number of potential consequences arise from a 100% licensing practice.

- Writing with collaborators who are affiliated with a different PRO could jeopardize a songwriter's ability to collect full royalty payments in a timely manner. The PRO to which he/she doesn't belong would have no existing structure to access information vitally necessary to pay and provide proper accounting to the non-affiliated songwriter. That PRO check that he/she has been counting on to make the mortgage payment would suddenly be unreliable. Writers who wanted to ensure control of their interest in a co-written work would be forced to limit themselves to only collaborating with other writers affiliated with their chosen PRO. Creativity would be lost to bureaucracy.
- The aforementioned lack of accessible information will undoubtedly result in increased cost for distribution of royalties. Either the PRO, the digital service or, most likely, the copyright owner will be forced to absorb that increased cost. It can be reasonably deduced that the decrease in economic efficiency could serve to further decrease the royalty payments for songwriters.
- In some cases, the practice of 100% licensing would be in violation of agreements that have been previously entered into between co-writers outlining ownership splits and exploitation rights. On such songs, if any owner, regardless of percentage of control, was affiliated with a different PRO than the other owners, that song could suddenly be contractually disqualified from PRO licensing and the writers would be left with no choice but to directly license and collect royalties, a task songwriters are administratively unequipped to accomplish.
- Competition would be diminished in the case of 100% licensing. For songs co-written by affiliates of different PROs, the digital services would have the ability to rate-shop. Recent rate court decisions have resulted in ASCAP and BMI licensing at different rates for digital streaming services. For any song co-written by affiliates from both organizations, a service such as Pandora would choose to license the song from the PRO with the lower rate and all writers on the song would be paid that rate even though their chosen PRO is able to license at a higher rate. It unequivocally renders a songwriter's choice of PRO affiliation irrelevant and discourages competition between the PROs.

Historical practice has never seen one PRO licensing its song on behalf of other owners who may be affiliated with a different PRO nor has it seen a songwriter being paid from a PRO with whom he is not affiliated for performance of a song licensed by that PRO. There are a number of problems with the current licensing system that need serious attention; fractional licensing is not one of them. Allowing 100% licensing undermines one of the few parts of the Consent Decree system that has worked effectively for decades. Taking further choices away from songwriters who are already encumbered by Consent Decrees and compulsory mechanical licenses would only serve to further decimate a treasured American profession.

## THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

### ABOUT NSAI

The Nashville Songwriters Association International (NSAI) is the world's largest not-for-profit trade association for songwriters. NSAI was founded in 1967 by 42 songwriters including Eddie Miller, Marijohn Wilkin, Kris Kristofferson, Felice and Boudleaux Bryant and Liz and Casey Anderson as an advocacy organization for songwriters and composers. NSAI has around 5,000 members and 140 chapters in the United States and ten other countries.

The Nashville Songwriters Association International is dedicated to protecting the rights of songwriters in all genres of music and addressing needs unique to the songwriting profession. The organization recently created the first "group" copyright infringement insurance policy for songwriters and formed a partnership for affordable health care for its members.

The association, governed by a Board of Directors composed entirely of professional songwriters, features a number of programs and services designed to provide education and career opportunities for songwriters at every level.

NSAI owns The Bluebird Café, a legendary songwriter performance venue in Nashville, Tennessee. The Music Mill, at 1710 Roy Acuff Place in Nashville, where the careers of Alabama, Reba McEntire, Toby Keith, Shania Twain and Billy Ray Cyrus were launched, serves as headquarters for the Nashville Songwriters Association International.