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Dear Attorney General Lynch,

The Antitrust Division of the Department of Justice has been reviewing the ASCAP and BMI Consent Decrees over nearly the past three years. In a recent phone call in which David Kully and Kelsey Shannon reviewed the Division's proposed conclusions from that review, it was indicated to us that not only does the Division intend to disregard the modest modernization changes we and much of the music industry requested, but they also intend to reinterpret the decrees to require ASCAP and BMI to license songs in their repertoires on a one hundred percent basis.

When the Department of Justice requested comments regarding Performing Rights Organization (PRO) licensing of jointly owned works in late 2015, the Nashville Songwriters Association International (NSAI) responded urging the Division to carefully consider what they were exploring. We warned at that time that the practice of one hundred percent licensing would disturb creative collaboration decisions, that payment arrangements across PROs would be problematic or worse, that the practice would violate the terms of agreements between ASCAP or BMI and foreign PROs as well as certain co-writer agreements outlining ownership splits, and that competition would be diminished allowing a music user to "rate shop." Similarly, the U.S. Copyright Office responded that "such an approach would seemingly vitiate important principles of copyright law, interfere with creative collaborations among songwriters, negate private contracts, and impermissibly expand the reach of the consent decrees."

During the aforementioned phone call, it was especially alarming that the Antitrust Division representatives had no proposed solutions for any of the questions posed to them regarding stranded works and payment arrangements and only postured that the "market would figure it out." They seemed certain that this interpretation would have no practical bearing on the day-to-day life of a songwriter. The truth is, the Division has not yet publicly released its conclusions, and it has already had implications. Publishers are presently having closed-door meetings to discuss whether they continue to allow their writers to co-write with whomever they choose or whether those decisions now become business decisions based on each writer's PRO; whether they will require all their writers to belong to the same PRO; etc. Songwriters themselves are having the same conversations. This proposed interpretation has yet to go into effect and already its ramifications are rippling through the industry.

I write to you today to formally request an independent review of this matter taking all practical implications into account. I appreciate your time and consideration.

Respectfully,

Bart Herbison  
Executive Director

On behalf of the NSAI Board of Directors

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