Before the
UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
Washington, D.C.

In the Matter of	)	
Antitrust Consent Decree Review for American Society of Composers, Authors and Publishers/Broadcast Music, Inc.	)	Consent Decrees - 2014

COMMENTS BY SONGWRITER GEORGE JOHNSON ON CONSENT DECREE

By electronic mail to ASCAP-BMI-decree-review@usdoj.gov

August 5, 2014

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

Dear Antitrust Division,

Thank you for the opportunity to submit the following written comments in response to this Antitrust Division Review of the *ASCAP* and *BMI* Consent Decrees. Please find attached the following sections for your thoughtful consideration.

A. Overview and Remediation of Concerns
B. Comments on 7 questions posed by The Department and Conclusion.
C. Additional Comments
D. Attached info-graphics created for the Copyright office, Congress, and music industry.

If you have any questions, clarifications, or need any further information, please contact me.

Respectfully submitted,

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Antitrust Consent Decree Review

American Society of Composers, Authors and Publishers/Broadcast Music, Inc.

http://www.justice.gov/atr/cases/ascap-bmi-decree-review.html

SECTION A

Overview

The operation and effectiveness of the Consent Decrees has unfortunately been a failure for the vast majority of copyright owners, songwriters, music publishers, and music creators the past 70 years. Sure, a select few have done well and literally created the classic American songbook.

But for the majority of *all* American songwriters from 1914 to 2014 and their music publishers, the old legal codes, the new digital legal codes and both Consent Decrees have all been written to always benefit the licensee, the broadcaster, the streamer, the PRO, or the public, but *never* the songwriter and copyright creator - the lawful property owners under two federal Copyright Acts, especially Section 106 of the 1976 Act.

The Consent Decree has been primarily devastating to the 99% majority of American songwriters and independent publishers the past 16 years with the advent of digital copying, piracy, Napster, downloading, and now streaming - especially so called "legal" streaming.

In addition to the unintended and unbelievable negative consequences the …

(1) Consent Decrees have had on songwriters and music publishers since the advent of streaming, webcasting and internet radio …

(2) songwriters and music publishers have the added interventions of devastating past rate court royalty settings combined with Copyright Royalty Board (CRB) royalty rate settings for streaming contained in CFR 385.1 through 385.29 at nano-pennies of .0012 (really .00000012) cents per song, to finally the …

(3) poorly crafted and seriously abused "grey areas" and "safe harbor" provisions in the Digital Millennium Copyright Act (DMCA) of 1998.

We independent songwriters and music publishers applaud The Department review of these Consent Decrees and we hope that you keep the *millions of songwriters and lawful federal copyright holders first in your decision*.

Please do not punish us members and copyright owners for the actions of a handful of executives at ASCAP and BMI, past or present, or the actions of some new flashy streaming company. We are ASCAP and BMI, the millions of member songwriters and the vital music publishers - *we are the ones who are really hurt by all of this and we are the ones who both take all the risk up front.*

Not only do songwriters create copyrights our of thin air, music publishers invest and pay for songwriters and our demo recordings up front with no risk or cost to the artist or the record label. Real music publishers also believe in songwriters and work hard to get our songs recorded by artists—so ASCAP, BMI can begin to collect their money and so can Google, Pandora and Spotify.

We supply their *only* product to the above five corporations, who make their living off of *one* thing they can't create, ***songs***, and it's only worth .00000012 cents to them.

It really does all begin with a song, but also with real money to pay every songwriter a salary up-front, the publisher's office rent, overhead, employees, demo recording costs, computers, music equipment, session players through the American Federation of Musicians (AFM), background singers through the American Federation of Television and Radio Artists (AFTRA), the engineers, second engineers, instruments, the song-plugger to pitch the song to the cost of the "pitch sheet" to see who is recording— it's the loss of a hundred year real "business model".

The real reason the Consent Decrees need to be modified is not to account for changes in how music is delivered or experienced by listeners, it's to stop the corporations delivering this new "innovative" technology "experience" called *streaming* from **abusing loopholes in government legislation and the Consent Decrees** to violate hundreds of years of lawful precedent in American copyright protection for songwriters and music publishers of all kinds and genres. A few lines of computer software code does not have lawful precedent overs hundreds of years of Constitutional copyright protection found in the copyright clause and hundreds of years of American legal copyright precedent and British copyright law before that.

And as for the argument that the public good or public purpose is somehow magically more important than individual copyright creators and therefore always takes precedent over protecting the copyright interests and personal property rights of individual authors and creators, James Madison said it best in Federalist 43 that:

> "The utility of this power (copyright) will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. **The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals.** The States cannot separately make effectual provisions for either of the cases, and most of them have anticipated the decision of this point, by laws passed at the instance of Congress."

Making sure that the individual copyright creators are protected in their works is the greatest contribution to the public good in the short term and long run. Isn't the copyright creator also part of the public good—or must the songwriter always be sacrificed to the licensees or some

public interest? Madison's point was that a copyright creator has an individual right to the fruits of his own labor and creation first, the public interest which includes all licensees is a distant second.

For songwriters and music publishers in 2014, clearly the Consent Decree's **"automatic license provision"** is the main problem.

The automatic license provision allows streamers to abuse us songwriters by blaming ASCAP or BMI executives or attorneys for their actions. This really only hurts millions of member copyright owners the PRO's represent. So, please don't blame songwriters or let streamers take out their dislike of major labels or ASCAP and BMI on us member songwriters and music publishers.

As mentioned above, the real legal abuse by streamers is combining this automatic license provision of the Consent Decrees with the rate court royalty settings. Add to that the CRB having a monopoly on price fixing music copyright royalties at nothing—which streamers and major record labels love, then add the streamers continued and unrestrained abuse of the "safe harbor" provisions of the DMCA to absolve themselves of copyright infringement which is really all they are doing - knowingly committing massive copyright infringement in the billions of plays: *these are the three legal hurdles all songwriters and music publishers must cross until we begin to get paid for streaming our copyrights - Consent decrees, rate courts, and DMCA safe harbor abuse.*

The main problem is that everybody is focused on the business models of ASCAP, BMI, the streamers and licensees like Pandora, YouTube, and Spotify but nobody's focused on the millions of songwriters, music publishers, their business models, their heirs and assigns and the millions of co-writers and co-publishers that are in the catalogs of Universal Music, Sony ATV or Warner Chappell.

I realize The Department would like to focus on competitive concerns due to aggregation of copyrights and market power, and I will get to that, but this is the scenario we songwriters and copyright creators find ourselves in every day the past 16 years and it all starts with the Consent Decrees.

Continued rate court intervention is destroying the collective licensing system ironically and therefore destroying competition among independent American songwriters and music publishers.

Likewise, streamers are destroying ASCAP and BMI with the current set of rate court decisions but really destroying competition among songwriters and music publishers by systematically putting them all out of business - only the major three labels' publishing companies and few major independents who have record companies will survive.

In a way the major labels are destroying their competition in sound recording copyrights and music publishing by being allowed to own 18% stock in Spotify or Beats netting Universal

Music $400 million dollars in the sale to Apple that artists, songwriters, and music publishers saw absolutely $0.

It's called "digital breakage" - it applies to stock options, monthly subscription fees, advertising dollars, investor dollars, but also major artists being paid enormous up-front money from streamers in the millions to make up for the lack of streaming royalties they will not get while the rest of us make $0 per stream. It's not very equal, progressive or appropriate.

All of the above actions do not promote or protect competition and are not appropriate.

We respectfully ask that The Department either completely abolish the Consent Decrees and start fresh with a level playing field for all copyright holders and licensees or find a way to remove or modify the automatic license provisions to stop streamers from abusing the Decrees, ASCAP, BMI member songwriters and publishers, and the American federal copyright laws.

If major hit songwriters and publishers were free to negotiate on their own "consent decree free" while others voluntarily (re-)join ASCAP and BMI with a revised blanket license that contains the same good provisions The Department agrees with and eliminates or modifies the bad parts like the automatic license for streamers, might be the best temporary solution.

We pray that The Department will stop streamers from destroying songwriters and small independent music publishers income and real business models another day longer by abolishing or reforming the automatic license provisions of the Consent Decrees.

The Consent Decrees are an integral part of the scheme that streamers use to destroy our royalties, our profits, our business models, our livelihoods and yes, our incentive as much as we love writing songs just for the fun of it.

Finally and just as important, the rate courts and the CRB seem to ignore the lawful and long time legal precedent of the **"minimum statutory rate" (MSR)** for mechanical royalties of 9.1 cents that is guaranteed by the Copyright Acts of 1909 and 1976. The CRB has even argued and ruled that a stream is both a performance and a mechanical at the same time. That makes a stream subject to the lawful MSR and therefore, 9.1 cents per stream!

The Copyright Act set the MSR at 2 cents in 1909 and it stayed there, unchanged for 70 years until the Copyright Act of 1976 raised it to 2.75 cents in 1978, not keeping up with cost of past, current and future inflation.

We ask that The Department stop all so called "legal" streamers from essentially stealing my song and copyright for .00000012 without my consent, negotiation, or control.

My private property right is being taken out from under me and the first and primary way streamers can steal my copyrights at this nano-royalty rate begins with the absolute abuse of the Consent Decree. That is why it must be abolished immediately or the automatic license

provision be removed or modified to exclude any digital streaming or download service from infringing on federal copyright owners private property.

The Consent Decree is very similar to eminent domain and especially in the landmark *Kelo* case since almost all songwriters and music publishers are being forced to transfer their private property over to another private corporation like Pandora, Youtube, or Spotify because of a "non-profit" like ASCAP that forces me to give up my property for free and accept .00000012 which is not reasonable, fair, or appropriate.

The City of New London Connecticut formed a "non-profit" they used to steal several hundred, several hundred year old Victorian homes overlooking the beautiful bay in Connecticut, claiming the homes were blight, to give to the Pfizer corporation. It is important to note that after Pfizer corporation stole these homes and property, it razed these historic homes to the ground. Then, after the *Kelo* ruling Pfizer abandoned the project and left the hillside decimated and actual blight.

I fear the same with the real 5th amendment takings of real intellectual property and the continued abuse of the Consent Decrees by all streamers.

Remediation of Concerns

In particular, these Sections of both Consent Decrees should be modified immediately, if not abolished or quickly sunset by the end of the year.

1. **The Automatic License Requirement** is the **number one change** that needs to be made immediately to **both** decrees as stated above. Ironically, this is the entire reason the decree was ordered in the first place and it's exactly the same now, 70 years later, problems with negotiating copyrights with licensees. *Maybe negotiating will always be a problem when there is no right to exclude or not license which is an essential building block of all property law, real or intellectual.* What I hope The Department will realize is that ASCAP and BMI are just licensees themselves, and they re-license so to speak, they don't own anything, so therefore tying the hands of ASCAP and BMI only further ties the hands of millions of songwriters, music publishers, heirs and assigns - copyright owners and creators, as it has been for over 100 years. The system and Decrees are clearly old, tired, broken and not designed for the digital world.

2. The fact that both decrees begin with both PRO's denying the allegations, especially BMI since it seems they were not guilty of monopoly in 1941 like ASCAP, but that both PRO's agree to this judgement *without trial or adjudication of any issue or fact of law and with no evidence or admission* of guilt, seems like no due process whatsoever. It seems odd on face value.

3. Finally, even though it is in the hands of the current rate court judges, we ask that The Department please allow ASCAP and BMI a way to keep their Digital Rights Withdrawal Addendum Agreements in place and to accept a partial grant of rights from it's members. This keeps all the majors at BMI and ASCAP and direct agreements in tact with streamers like Pandora and Apple. This also works for small independent publishers like myself who also signed the DRWA agreement.

4. Since the real market power threat and aggregations of copyright has really shifted from the PRO's to the streaming licensees such as Google/Youtube, Spotify and Pandora who use market power to evade paying for federal copyright registrations to music composers and publishers, **a new consent decree might be considered for Google/Youtube, Spotify, Pandora and all other streamers.**

5. *"Streaming Accounts"* or *"Copyright Accounts"* should **be required by all streamers to pay all copyright owners**, one-time, up-front, per-song, just like an iTunes download account but without the downloads, or unless the customer want to then it's freely available to download and stream as much as the customer would like. Since streamers like Spotify allows customers to download their entire playlist without paying for the minimum statutory rate mechanical of 9.1 cents for a download - the CRF 385 regulations that allow this should be abolished to allow for full tethered downloads while streaming or "stream-loading" but customers have to pay on a per-song basis in place of or in addition to subscription rates. It may seem like a shock to streamers but they have gotten away with copyright infringement and *virtual piracy* long enough.

ASCAP Changes

6. Section VI of the ASCAP Decree clearly allows streamers like Google/Youtube, Spotify, Pandora, and all others to legally steal or virtually pirate almost every song every written and recorded just like Napster. In fact, Sean Parker of Spotify has said that Spotify is Napster 2.0 and a continuation of his vision at Napster, and he is correct about that. These are our copyrights and we are not involved in their control, negotiation, or profit at .00000012 cents per play for the past 16, to 38, to 105 years. Copyright is on an individual per-song basis, not a blanket basis.

7. Section IX (A) and (B) should be modified since fees of .00000012 are not reasonable and ASCAP and BMI already have the ability in the Decrees to deny licensees if the offer devalues the copyrights. Section IX only allows streamers to steal our songs for free.

8. Section VIII (C) 1 through 4 should be updated by requiring ALL licensees, including all commercial terrestrial radio station that do not report to or are not tracked by Nielsen or Mediabase, to email accurate daily playlists or song logs in as CVS files or similar database format. Approximately 4800 to 5300 commercial radio stations are not being tracked, logged or fingerprinted by ASCAP and BMI or Nielsen and Mediabase for that matter. ASCAP and BMI buy Nielsen and Mediabase song fingerprinting tracking data that is 100%

correct, yet ASCAP still 2 week samples this 100% data from what we understand. (see attached charts) BMI has stopped this practice which we applaud.

9. Section XI (A) and (B) of the ASCAP Decree must be eliminated or modified immediately since 2 week sampling and so called surveys are a relic of a pre-computer past and only an excuse to steal money from member songwriters. If ASCAP or BMI buys100% data from Nielsen or Mediabase on 1700 or 2200 commercial radio stations and only pays on 1% of 100% data, a 2 week sample or survey, that is pure piracy and copyright infringement. The PRO's are supposed to protect their members from piracy and infringement, not participate in it. Other than the Consent Decree, this is the other reason I left ASCAP since it seems they still 2 week sample while BMI has given up the practice. (again, see attached charts)

10. Additionally, Sections IV (F) should be modified to refuse use of the repertoire if streamers do not accept reasonable offers from ASCAP or BMI. ASCAP and BMI are only licensees like Pandora, Youtube and Spotify so copyright contains the right to exclude and should apply here. It is the entire problem - the consent decrees and rate courts allow all the parties to *not negotiate*. Instead, the PROs should withhold songs if the licensee refuses to pay a reasonable rate which should be what the copyright owners want and agree. The Consent Decrees essentially force ASCAP and BMI to *not* have a real world negotiation.

BMI Changes

11. All the similar Sections of the ASCAP Decree should be modified or abolished for the BMI Decree, especially Section VIII (B) which appears to be the automatic licensing provision.

12. With Section VIII (A) of the BMI Decree, major record companies appear to be in violation of the Decree by not being "similarly situated" with other member publishers by pocketing all "digital breakage" profit which are stock options, stock increases, company sales and also offering premier publishers and artist/songwriters huge up front payments in the millions of dollars to make up for the loss of publishing, songwriting or performing royalties.

13. Also modify Sections of the BMI Decree 10 (A) similar to the ASCAP Decree.

(NOTE: See more about the automatic license provisions on page 8 Section A of the following testimony by Paul Williams of ASCAP:

http://judiciary.house.gov/_cache/files/5b77d14c-1ea5-491a-a508-5167e5d3d95c/062514-music-license-pt-2-testimony-ascap.pdf

In addition to the above ASCAP testimony link, the following two links to the comments by BMI and ASCAP to the Copyright Office for the recent Music Licensing Study are also very helpful. Even though I have recently left BMI and ASCAP as a publisher, I could not have more eloquently expressed the exact legal changes necessary than both ASCAP and BMI have proposed and agree with 99% of the changes.

http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/ASCAP_MLS_2014.pdf

http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/BMI_MLS_2014.pdf

The only thing I do object to, which seems odd and seemingly slightly off topic, but as a songwriter and music publisher, I am not a supporter of the Songwriter Equity Act SEA bill because of four major problems, it:

A. Keeps the CRB rate court system in place which is one of our major problems (combined with the consent decree and abuse by streamers of the safe harbor provisions of the the DMCA) since it is price fixing rates at nano royalties of .00000012 to only benefit licensees, not copyright owners. The rate for a song was 2 cents in 1909 and in 2014 it's .00000012. Clearly, the current music copyright licensing and music royalty system doesn't work.

B. The heart of the bill proposes a phony "free market provision" that will supposedly solve all our problems but the CRB only has to consider it. Clearly, you can't have a free market inside a federal song court where three judges have a monopoly on price fixing individual copyrights royalty rates and centrally planning the copyright and music royalty economy.

C. And since CRB rate court petitions only come around every 5 years, the next mechanical rate hearing is in 3 years and CRB rate hearings take a standard 2 years to complete. The SEA bill only *might* do some good, but it will be a minimum of 5 years, CD's and downloads might not be for sale or even obsolete by then. So the bill does nothing for a minimum of 5 years for music copyright creators, if at all. The last digital sound recording hearing for 2011-2015 was just completed in April of 2014 and *took 9 years to complete*. In the world of instant streaming, downloading and direct deposits, 9 years is a long time to wait to get to market or collect your "profits".

D. The SEA bill does not consider *inflation costs* in the rate adjustments. That 2 cents in 1909 that is now .00000012 cents per song is actually 47-52 cents per song according the CPI using several inflation calculators. So, a CD and download mechanical royalty rate is really around *50 cents right now in 2014* and must be changed immediately.

SECTION B

Public Comments on 7 Questions posed by The Department

In particular, the Department requests that the public comment on the following issues:

1. Do the Consent Decrees continue to serve important competitive purposes today? Why or why not? Are there provisions that are no longer necessary to protect competition? Are there provisions that are ineffective in protecting competition?

No, they do not, They were written before computers and instant wireless communications. As a songwriter, copyright creator, performer, etc., this is also an odd question for me. The reason is it is asked from the perspective of the music licensees' point of view, from the point of the PRO's and through the lens of Section 1 of the Sherman Act, 15 U.S.C. § 1. I, of course, look at it from a songwriter's point of view as a creator, federal copyright owner, private property owner, business owner, an individual publisher, performer and federal sound recording copyright owner.

So, as mentioned above in the overview, when it asks do the decrees continue to serve important competitive purposes today, I think for whom?

To answer the question, overall, they do not continue to serve any important competitive purpose today, only hinder it for all parties involved and while truly harming real *free market* competition that ironically, would *solve the competition issue* immediately. **The reason is there has been no real free market in music for over 100 year in America.** The only real way to solve it is abolish the Consent Decree by year's end, but by applying the above solutions to remediate the concerns of The Department by appropriately modifying the above mentioned sections on both Decrees would go a long way to resolve the entire situation.

From my perspective and every music publisher and songwriter I know, the consent decree has absolutely destroyed competition for songwriters and music publishers who for the past 16 years have been forced out of business by rate courts, compulsory licensing, the CRB and the CRB and rate courts having a monopoly on price fixing rates. What about those monopolies?

What about the monopoly Soundexchange has on collecting all royalties for digital sound recordings?

It is curious that when a private company like Microsoft or Standard Oil has a "monopoly" on creating a product that people like at a cheap price, that is considered bad and illegal to the government, yet it approves of or condones a monopoly like the Copyright Royalty Board central planning and price fixing copyright royalty rates for 38 years—or SoundExchange having a monopoly on collecting all royalties for digital sound recordings, that's good and legal?

So, if all monopolies are bad why are the CRB, rate courts, and SoundExchange monopolies good?

If it's competition The Department is worried about it seems clear that the RIAA created SoundExchange has close to 95% market power and 95% aggregation of all digital sound recording copyrights, yet it's ASCAP and BMI who are the problem? I don't mean to pick on the good folks at SoundExchange either and not that they have any antitrust issues—my real point is maybe it's time to let SoundExchange, BMI, etc. collect the bundle of copyrights associated with each individual song, let everyone compete, and may the best royalty collector win.

The past 16 years, music publishers, songwriters, and lawful federal copyright owners have been forced out of business or their incomes decimated by streamers like Youtube, Spotify, and Pandora who abuse songwriters with unlawful so called "business models" and legal interventions like the Pandora v BMI and Pandora v ASCAP cases - which leads to more interventions and unintended negative consequences for everyone.

Additional intervention by Judge Stanton and Cote have caused additional chaos and unintended consequences by forcing music publishers 100% in or out of BMI and ASCAP and essentially nullified the Digital Right Withdrawal Addendum which was a perfectly legal binding contract in my opinion and I hope both judges decisions are reversed with all due respect to them.

The Consent Decree is primarily a large legal loophole that streamers like Sean Parker at Spotify or Tim Westergren at Pandora or Eric Schmidt at Google can abuse to "legally" avoid paying fair or free market prices for copyrights. It is incredible they have been allowed to go on this long and not pay for music. Especially in light of that Sean Parker started Napster.

Sooner than later, *the consumer is going to have to start paying for music again* and that is the real solution. As mentioned above, require ALL Copyright owners to be paid up front like secured creditors that they are. **"Streaming Accounts" or "Copyright Accounts"** should required by all streaming services to pay copyright owners through advertising revenue or forcing customers to pay *2, 3 or even $5 dollars per song*, taking into account inflation over the next 5 years, one-time, up-front, per-song, per streaming company.

I understand that the primary question here is about the aggregation of copyrights by ASCAP and BMI under Section 1 of the Sherman Act, 15 U.S.C. § 1 and to address competitive concerns arising from the market power each organization acquired through the aggregation of public performance rights held by their member songwriters and music publishers.

But at the time of the original decree, ASCAP was the old monopoly and BMI and SESAC where the newer startups in the 1930's.

Since then we've had ASCAP, BMI, SESAC so there's no longer a monopoly and add to that new PRO's starting up. The market power of these three main PRO's is also being diluted by a new free market of direct deals taking hold after 100 years of stagnation and lost prosperity.

In 2014, so called 'legal"streaming is the new monopoly and may be in need of a new consent decree. Some streamers now appear to have too much aggregation, and all of them violate the federal Copyright Acts of 1909, 1976 and of course the copyright clause in the Constitution.

2. What, if any, modifications to the Consent Decrees would enhance competition and efficiency?

First, by abolishing them would greatly enhance competition and efficiency that can only come with a real free market. However, since the DOJ will probably not abolish the Consent Decrees, see the above changes in remediation of concerns, primarily *abolishing the automatic licensing provision in both Decrees*.

The entire reason why I left BMI and ASCAP is to become "consent decree free" because streamers like Pandora, YouTube and Spotify can use and steal my music for literally nothing. It's that simple. There are some great folks that work at all of these companies, but this is wrong.

If there was no consent decree then the streamers would not be able steal songs from ASCAP or BMI or it's members.

It's the same as Google/Youtube, Pandora or Spotify backing big tractor-trailers up to Whole Foods, Kroger, and Foodland and just clean out the entire grocery store with nothing left on the shelves. Then tell those managers at the grocery stores we will get back to you whenever we feel like it and by the way we're only paying .00000012 cents for that T-Bone steak, for that gallon of milk and for that in a box of cereal that costs four dollars, So, it's basically robbing and stealing with a computer and that's why the consent decree must be modified or abolished immediately.

The Department of Justice must give back songwriters and music publishers control of their hard earned private property.

3. Do differences between the two Consent Decrees adversely affect competition?

No, not at all for songwriter and music publishers, only the Consent Decrees themselves adversely affect competition for everyone.

4. How easy or difficult is it to acquire in a useful format the contents of ASCAP's or BMI's repertory? How, if at all, does the current degree of repertory transparency impact competition? Are modifications of the transparency requirements in the Consent Decrees warranted, and if so, why?

It is way too easy to get a license for ASCAP or BMI's repertoire. All you have to do is file a request and they are forced to give it to you. I'd love to be able walk into Outback, Longhorn, and Ruth Chris steakhouse and file a request for steak and eat and walk out for free, then say it's only worth .00000012 cents. As far as acquiring the useful format, usually the record label, music publisher or digital delivery service like MPE will make the actual song file available to terrestrial radio.

As far as modifications to *transparency*, see the below chart and comments on only paying members and copyright owners on *2 week sampling* by ASCAP while buying 100% tracking data from Nielsen. If this is true, then a modification to stop 2 week sampling of songs is in order at ASCAP. *ASCAP and BMI should be 100% transparent on 100% data tracked in real time on their websites with automatic direct deposits into the copyright shareholder's bank accounts.*

5. Should the Consent Decrees be modified to allow rights holders to permit ASCAP or BMI to license their performance rights to some music users but not others? If such partial or limited grants of licensing rights to ASCAP and BMI are allowed, should there be limits on how such grants are structured?

Absolutely yes within limits. The digital rights withdrawal addendum's ASCAP and BMI crafted worked perfectly fine and was a private contract between actual willing buyers and sellers.

In my opinion, as the only person to leave BMI because of the recent judges rulings, the judges had no cause to go and destroy a perfectly good private contract between two private parties.

Copyright includes the right to exclude and that should apply to ASCAP and BMI in certain dire situations like licensing to streamers. Copyright owners should be allowed to negotiate within ASCAP or BMI.

6. Should the rate-making function currently performed by the rate court be changed to a system of mandatory arbitration? What procedures should be considered to expedite resolution of fee disputes? When should the payment of interim fees begin and how should they be set?

Absolutely no arbitration. The rate making function is the problem and the rate court should really be abolished I hate to say it along with the consent decree.

This business model going from two cents to a nano penny over hundred years has failed miserably and it must change and the only way to do that is to get rid of the government intervention or modify it a great deal.

7. **Should the Consent Decrees be modified to permit rights holders to grant ASCAP and BMI rights in addition to "rights of public performance"?**

Absolutely yes for BMI. However, if ASCAP is going to continue to sample to 2 week sample or survey any other performances or rights then absolutely not. However, if ASCAP were *not* to sample and collect every performance and pay 100% of performances with 100% Transparency, then yes. In theory, yes for both BMI and ASCAP.

Furthermore there's no reason why SoundExchange should not be allowed to collect for musical performances, the mechanical side of a stream or the underlying music works for publishers and songwriters.

By the same token BMI and ASCAP should be allowed to collect recordings like SoundExchange and since the Copyright Office is thinking about bundle rights it seems like the only *logical thing to do, plus it solves all your Sherman Antitrust competition issues*.

Conclusion

The Consent Decrees *are* ***absolutely not*** *serving their intended purpose and need to be abolished immediately*. They are the *number one regulation* that has ruined the music business next to price-fixing rates at pennies for over 100 years, and now nano-pennies while streamers make billions and rampant inflation further destroys the value of songwriter's hard earned property.

It's not the songwriter's fault that as a huge monopoly, ASCAP was extorting mom and pop diners and bars or stations in 1937 and 1941. Of course, today the Decree allows streamers to *freely steal songs with no negotiations on the property owners behalf* and that is a complete *violation of basic copyright law*. To then say that *it's the songwriter's problem* for being a member of ASCAP and BMI completely misses the point and is destructive to all copyright owners. W*hat a destructive legal precedent*. Plus it restricts current and any new PROs from collecting other royalty streams on the same song. Maybe it's Google or Spotify who need a consent decree?

The point is that the songwriter, member of a PRO or not, still *is not involved in the negotiation of their own property*, their only source of income, but yet DC lobbyists insist on being part of the negotiations when it is none of their business. Maybe music lobbyists need a consent decree?

The individual songwriter *must be in charge* and in *100% control* of his negotiations for the first time in over 100 years. This obsession with forced consent decrees and forced collective bargaining is what's been ruining the music royalty system and it's run it's course.

The only solution is to completely abolish the consent decree or modify it just to keep the antitrust provision, yet not let streamers have a guaranteed automatic license for no money.

The Copyright office writes, "These consent decrees were designed to protect licensees from price discrimination or other anti-competitive behavior by the two PROs." Yet, it has done the complete opposite.

As far as 2 week sampling, an ASCAP board member wrote me that if a song wasn't inside the *2 week sample it got "zero". That is incredible* and should call for a *full audit* by the GAO on decades of unadulterated song piracy by ASCAP and BMI so that in the future this never happens again and soon.

In this day and age with computer tracking, ALL songs should be tracked on terrestrial radio.

Noel L. Hillman *sums up music antitrust brilliantly* in his introduction to his 1998 essay: Intractable Consent: A Legislative Solution to the Problem of the Aging Consent Decrees in United States v. ASCAP and United States v. BMI in the Spring.

"The intersection of intellectual property and antitrust presents one of the great ironies in the law. Antitrust law presumes that the advantages of monopoly are *outweighed* by the dangers inherent in concentrations of market power. Yet the law of intellectual property, especially copyright law, seems to presume the *opposite*. A monopoly is *good* - even one extended and protected by statute for many decades, as is copyright. In those cases where this natural tension between seemingly opposite forces ceases to exist, the danger of monopolistic malfeasance increases. Where these forces coalesce, as when a copyright owner also accomplishes unfettered market power, the results can be disastrous for consumers of products subject to intellectual property rights.

During those years when the federal government vigorously enforces the antitrust laws, consent decrees are entered into which attempt to delineate proper conduct into the future. However, such decrees may fail to anticipate how changes in technology and consumer habits alter market mechanisms and the effect the consent decree itself will have on how market actors behave. Those decrees which lack any meaningful provisions for modification will remain in place, self-perpetuating, and undisturbed during those periods when the antitrust laws are not vigorously enforced. At best, they become dormant and ineffective. At worst, *the decree itself becomes anti-competitive when the market it had sought to control in the past no longer exists* and the market structure created by the consent decree itself favors the former "monopolist" whose behavior the consent decree …" 8 Fordham Intell. Prop. Media & Ent. L.J. 733

I would add that the reason why *monopoly of copyright is the exception to the rule* when outweighing the dangers inherent in concentrations of market power, is since copyright is an *actual right* - just like in the Bill of Rights and free speech.

What makes a copyright owner's monopoly good as opposed to ASCAP's original monopoly or the current government/lobbyist sanctioned monopoly SoundExchange has on all digital sound recording royalty collection? It's that his individual copyright is merely the fruits of that person's mind, talent, craft, sweat equity, risk, and stored labor that every person is entitled to enjoy. Copyright creators have a right to 100% of their labor for limited times, then the public gets it. Streamers have no right to copyrights without the owners' permission.

Here's a recent editorial I wrote in The Hill outlining why I left BMI and ASCAP - the consent decree.
http://thehill.com/blogs/congress-blog/judicial/203973-music-industry-stifled-by-old-law

Music industry stifled by old law

In three words — "federal consent decree"--an antiquated legal ruling from 1941 is destroying the music business and will continue to have a chilling effect on one of America's most creative and beloved industries.

It really should be called the "non-consent" decree, as many current songwriters like me sure didn't consent to it. Interestingly, the 73-year-old federal consent decree could be lifted with the stroke of a pen. But it has to be the right pen. As strange as it sounds, now only the U.S. Department of Justice can save the incomes of all songwriters and music publishers by simply abolishing this outdated decree.

Such an action would immediately help BMI and ASCAP by allowing member songwriters and music publishers to be paid for their songs -- and not allow streamers to use songs from the catalogues of BMI and ASCAP for virtually nothing. We have been witnessing virtual piracy at nano-royalties.

Who would have guessed that the livelihoods and music careers of millions of songwriters, music publishers, sound recording owners plus their heirs and assigns are all in the hands of the Department of Justice?

But today, the songwriter and music publisher no longer have control over their own property: the licensees do, and that has to stop. One major lynchpin is removing the 1941 consent decree for good.

As every lawyer knows, a consent decree is just a legal tool that courts use to punish certain companies for past wrongdoings by letting them continue to operate, while forcing them to stop certain criminal behaviors.

So, in this case, just because ASCAP executives were up to no good in 1941, that doesn't mean streamers and web-casters should be able to steal millions of songs in 2014 at $.00000012 cents per song.

Where is the justice in that? The unintended consequences for songwriters, music publishers, and independent artists has been devastating for them over the past 15 years and into the foreseeable future.

Lately, a great deal of confusion has been created and a series of events has already irrevocably changed the future of music and royalty collection forever.

These historic events have included major publishers leaving BMI and ASCAP the past few years, and as a result, we've had two opposing federal rate court rulings — one forcing ASCAP publishers back in, the other forcing BMI publishers back in or all out. As of this January, a majority of major music publishers completely left BMI, though some have recently signed temporary agreements until the end of the year. In addition, most of these majors publishers have negotiated historic direct licensing deals with streamers like Pandora.

Unfortunately, ASCAP and BMI have never tried that hard to abolish the consent decree as it was always convenient to hide behind it. It creates an instant market, letting broadcasters and streamers license the pair's

repertoires while forcing writers and members to take below market rates and stay locked in with a windowed two-year automatically renewing agreement.

Moreover, ASCAP continues the outdated practice of "two-week sampling" on traditional radio. It made sense before computers were invented; however, to continue sampling a few hundred reporting stations while tracking or purchasing three months worth of 100 percent computerized song data from Nielsen of around 1700 stations doesn't seem quite right. To BMI's credit they have stopped the 2 week sample and pay on all performances from approximately 2200 radio stations monitored by Mediabase. For that, BMI should be congratulated.

"It's a godawful system that just doesn't work," Sony/ATV Music Publishing Chairman Martin Bandier has said about streaming rates and the consent decree. If Sony/ATV or Universal leave BMI, it might be over for BMI. After all, Universal and other majors will probably leave if the consent decree and judges' rulings are not resolved by the end of this year. Even legendary songwriter Burt Bacharach called for drastically reforming the consent decree in a Wall Street Journal editorial a few months ago.

For the sake of an American music industry that has given so much to our shared cultural life, we must find a way to improve the music business for the better--a way that benefits all players.

To their credit, BMI tried to make a start in this direction. Last year, BMI provided me and other major publishers with a Digital Rights Withdrawal (DRW) addendum to our standard publisher's agreement. This move allowed publishers to direct-license their catalogs with streamers and other digital web-casters without interfering with BMI's collection of terrestrial radio performance royalties plus cable television and other traditional mediums. This agreement had to be signed by September 15, 2013 to take effect, and I did so.

This was a great agreement, and I hope the courts rule that the DRW addendum still stands. I applaud BMI's current effort to keep the DRW in place and to reform the consent decree in talks with the Justice Department.

For 16 years I've been affiliated with BMI as a songwriter and music publisher. I have great friends who still work there, and I regret having to leave. None of them designed this system; it evolved as distribution and technology evolved.

The outdated and harmful federal consent decree can only force all songwriters and publishing companies to take literally nano-pennies or what some call "below market rates" for so long. All major publishers, as well as this one, have been forced to re-think our affiliation with ASCAP and BMI because of a tiny but devastatingly harmful 73 year old legal decree.

Lift the consent decree, let ASCAP and BMI amend their blanket license for the 21st century, and let those who wish to direct license their catalogs do so. Let songwriters and publishers get back to what they do best: making music.

Johnson is a songwriter, singer and music publisher based in Nashville, Tenn.

SECTION C

Additional Comments

We sincerely pray that The Department's first priority will be to protect and stand up for *all federal copyright* owners, *their various business models*, their underlying works, sound recordings, performances, *livelihoods* and *profits first,* then consider the business models of broadcasters, streamers and future music licensees, *and then the market aggregation of copyrights by BMI and ASCAP,* then the *public* interest, *not the reverse as it's always been.*

Clearly, the DOJ must stop *illegal peer to peer piracy*, illegal streaming sites or illegal download sites and hopefully will through the combination of new encryption methods, new password methods, ISP enforcement, software monitoring, fingerprinting waveforms, further embedding copyright metadata in music files, *self-corrupting music files*, and criminal enforcement of CEO's, executives and directors who knowingly profit from piracy and blatant copyright infringement. Advertisers on pirate sites or other 3rd party beneficiaries should not be exempt.

First, protecting us from "legal" streamers is job number one.

It's absolutely imperative that the DOJ *stop streamers from using out song copyrights* for .0012 cents, or .00000012 cents without our consent, Consent Decree or no Consent Decree, *we must be involved in our own negotiations*. A nano-penny is not even *a peasant's wage* while Pandora CEO Tim Westergren cashes in his limit in stock for $15,000,000 million dollars a year then Pandora spends $11,000,000 million in legal fees fighting ASCAP to lower songwriter royalties.

Even the .091 cent mechanical rate is artificial, arbitrary, painfully low and should really be about .52 cents if you adjust for a reasonable cost of living increase using the government's own CPI on the 2 cent statutory mechanical rate from 1909. The Copyright office must let copyright owners and creators negotiate their own rates if they so choose instead of another 100 years of forced collective bargaining. Heartland Express drivers make up to .52 cents per mile.

The royalty system should really be a *computer program* just like Nielsen BDS that *automatically tracks songs* but then *direct deposits* all royalties into *individual bank accounts* - **for terrestrial radio, digital jukeboxes, the internet, and all streaming sites.** The computer ruined the music business and the computer can save it if the Copyright Office and Congress have the will to demand 100% Royalty Transparency for all owners - **100% Data Tracking.** Otherwise, every major record label will continue to bypass the CRB, PROs and Consent Decrees, but that's a free market taking over a crumbling centralized price-fixing monopoly gone wrong.

PROs say they are "non-exclusive" but with the consent decree, the compulsory license and the CRB setting rates at nano-pennies at way below "below market rates", they are not, they're traps.

A true free market will instantly do a few wonderful things for all copyright owners and fix the current broken system. The sooner the better and immediately is best. Here's how.

- It will let 2 parties voluntary negotiate a price like normal people with no CRB as a net.
- If the two parties do not agree on a rate or terms, nobody gets the songs, like at the grocery.
- It would force streamers to pay an *actual fair market* rate for songs at *real free market rates*.
- If that streaming company is too cheap to pay songwriters, a lawful streamer will build a real streaming business model that will pay.
- It instantly does away with *millions of dollars* in attorney fees, delays, and *years of wasted time in endless CRB hearings* which have *kept rates at nano-pennies* and allowed Pandora, Youtube and Spotify *to abuse the system*, the CRB rate process, the DMCA safe harbor *grey areas*, and ultimately abuse the songwriters, music publishers and sound recording copyright owners. The SEA bill keeps *all* of this, proposes a *phony* free market and is *5 years away*.
- For the first time in 100 years *all* songwriters would finally have a real chance to *make a decent living*, where only a handful at the top writers have been allowed to profit.
- For the first time in 100 years songwriters, music publishers and sound recording owners will be *involved in their own negotiations* for *their own songs* and intellectual *property*.

Unfortunately and sadly after years of intensive study and research, the most important central issue facing all individual songwriters, sound recording creators, recording artists, singers, producers, and all music copyright owners comes down to one simple question:

What do streamers want and what is in their self-interests, not copyright owners?

So, what benefits the streamers' "business model" and financial stability is always first and foremost and not what benefits the real business models, financial stability and incomes of millions of songwriters, music publishers and music copyright creators. Compromise they say.

Now, *a handful of streamers take precedent* over all the music copyright owners and they will only continue to use and pirate songs, then claim to love and represent copyright owners - nothing will be different this time. Once again, songwriters have been backed into the corner and told to accept the crumbs that are given to them.

The solution? Put songwriters, music publishers, sound recordings owners, and performers *first* for once, then streamers and all licensees *second*, the public interest *third*. Not on an equal basis, since it's been one sided for 15-100 years. Put creators on top where they morally and lawfully belong. It's their property and they created it, not streamers.

Are creators not entitled to the full fruits of their labor? Isn't it their choice who they share the fruits or their copyright with?

The message to all streamers, performing rights organizations, music lobbyists and even the major labels is that: *You* are not doing *us* a favor, *we* are doing *you* a favor. We songwriters, performers and music publishers are giving you the *privilege* of using *our talent*, time, and hard earned property that took you *no effort*, no financial *risk* and *cost you nothing* to produce - a *hit* song or a *great* song that stands the test of time. We are doing you a favor by giving you the privilege of using *our property* to *make millions* of dollars for a small, small percent. Life was going on without you and you wouldn't have made *any money* if it weren't for *us letting you use our property* and the *fruits of our labor*.

The Constitution is based on natural law and individual liberty, therefore copyright is based on natural law and individual liberty. *Copyright is a right like the right to free speech, no different.* It was designed to protect your art, stored labor and future income, *but no longer does*.

The public good and public interest in copyright has always been best served by the protection of individual private property rights and only when those rights are respected and upheld first, not the other way around. As the Copyright office is well aware, the Founders explicitly wrote that copyright is an individual right to be protected *first* and that will serve the actual public good most efficiently - not the current model where the public good comes first and copyright owners aren't even at the negotiating table, literally. The Founders would be astounded at our current mess.

Unfortunately, *the great "compromise" that is awaiting* to take place once again for songwriters, music publishers and sound recording owners, is only designed to ensure the financial survival of this handful of new Silicon Valley streaming companies, their profit, stock options, Wall Street investors, IPOs, and personal salaries, all subsidized at the expense of the creators of *their only product*, **songs**. *Please consider our years of sweat equity and loss of income the Decrees cause*.

All songwriters, music creators, publishers, sound recording artists and independent labels will once again be forced to "compromise", to serve and sacrifice for Pandora, Youtube and Spotify's "business model" — for their financial stability, *again*, not for *our financial stability* but **ironically against our own livelihoods and financial self-interests**. The situation couldn't be much more dire than it is now at this very moment in music - creatively and financially.

If streamers don't like it and can't adjust their business models to pay songwriters, music publishers and sound recording owners, then let them go out of business or let someone else come along who will pay for songs.

Why is Pandora, Youtube, Spotify, etc., permitted by Congress and the Copyright Office to behave in a way with no concern for other peoples' copyright and hard-earned personal property?

The fact that streamers can steal songs with no negotiations and profit in the billions is absolutely incredible. *Their profits are created* by songwriters, music publishers, and sound recording creators copyright owners, *then subsidized by our business models*, yet streamers and music lobbyists ironically have *no regard* for songwriter and music publisher business models.

Self-interested streamers, outdated federal regulations, rate courts, the Copyright Royalty Board fixing prices and music lobbyists interference have decimated the songwriting and music

publishing landscape the past 5 to 15 years. Every songwriter, creator, publisher, singer, or music industry person I know on Music Row is sick to their stomachs over what Congress, the Copyright Office and Copyright Royalty Board have let streamers get away with — *forcing* songwriters to accept .00000012 for our copyright with *no say* in the matter whatsoever.

What should be *most important* to The Department is the *success and business models* of **millions of American songwriters, lyricists, melody writers, music publishers, independent labels, sound recording owners, recording artists, singers, background singers, professional studio musicians, recording engineers, producers and all the jobs that surrounds the industry.** We can't let a *handful of new streaming companies* and their brands, survival, their jobs, salaries, benefits, careers, and self-interests come first - yet their legally allowed and encouraged to live off *our* creations, *our* property while songwriters *subsidize their wealth*, while *they sleep*.

There are *four major problems* with basic copyright in America: **Control, Value, Permission and Negotiations**. The copyright creator, claimants, heirs and assigns have *no say* in *any* one of these four categories, and it's their property. When I begin to look at this objectively and from a *basic economic and business standpoint*, it's clear the current royalty system is *anti-market, corrupt, broken, fixed, unfair, unlawful, and unsustainable*.

- **Control** - 100% *Control* must be restored to copyright owners, copyright creators, claimants, heirs and assigns immediately, *this year*.

- **Value** - 100% *Value* of the copyright must be re-established for copyright creators, after all, it's their property, they created it, not a DC music lobbying firm that allegedly "cares" more about a song than the creator that wrote it. *To create value again, music can't be free all the time*. It must become *scarce again* while still being everywhere, but not free. **Simply, no more giving away free music without copyright owners getting paid.** Streamers like Google Pandora and Spotify have transferred the money to themselves in the form of monthly subscriptions that used to go to record companies, then songwriters and publishers. So, instead of spending $10 or $20 a month on buying an album, tape, or CD, most consumers are spending the same amount on a Pandora or Spotify monthly subscription fee.

- **Permission** - 100% *Permission* needs to be given back to its rightful and lawful owner, the copyright creators and claimants. The permission has been *taken by force,* through lobbying, legal challenges, precedent and federal regulations the past 100 years. It's the reason why a streamer can get away with not negotiating with the songwriter or music publisher, not pay either for their property, and maybe pay them .00000012 cents per song.

- **Negotiations** - No songwriter is ever asked to be involved in any of the *negotiations* as to the price of his copyright, his property. Of course, the main excuse is - you're signed to a PRO like ASCAP or BMI and bound by the federal Consent Decree. It's the legal excuse used by BMI, Pandora and the rate courts, which always say, "Sorry, you're stuck with us. It's the system and you're forced to let us use your song for free because it's "the law". Either way, the songwriter and music publishers *are still not involved in the negotiations for their own property*. It's a license to steal and virtual piracy and it's wrong.

We songwriters, publishers, and recording artists thank you for this opportunity, your thoughtful consideration and for all your efforts. We sincerely applaud The Department's current reform of the Consent Decrees and helping us creators fix these broken music royalty systems.

Let the copyright owners and creators take back the *control* and *value* of their work which also serves the public interest. However, if *free songs* for the whole world is the definition of *serving the public interest*, then all food, cars, homes and all legal services should be free as well. (see LRB charts below)

With computers we can easily fix and quickly streamline the royalty process and make sure the *unauthorized use of music can be gradually done away with*, while the public interest and the interests of copyright owners are considered and respected.

Licensing has turned into a Popeye cartoon where Wimpy wants to pay next Tuesday for a free hamburger today - that's the compulsory license combined with the Consent Decree and it only allows streamers and live performers to make money off your song and not pay you for it. Many digital distributors and 3rd party aggregators are cooking the books and some don't just pay at all, similar to ASCAP and BMI using two week sampling and surveys, and streamers like Spotify and Youtube hiding behind the Decree and grey areas in the safe harbor provisions of the DMCA. That also must stop

Transparency is what's desperately needed at all PRO's and streamers, *100% Transparency*, now.

The songwriter and copyright creators need to get back *control* of *their* property, now.

The copyright law has *always been clear* that a song is the songwriter's and music publisher's property and it's 100% up to them what *any* other individual does with *their property*.

With the age of the internet, smartphone, email, websites and personal computer for the past 40 years, *there is no excuse for not getting a proper license for a song* from a music publisher, songwriter or sound recording owner *and then getting paid through computer tracking and direct deposit, in real time*. Thank you again for your consideration and all your help.

Here is a great excerpt from computer scientist and inventor Jaron Lanier.

"Drove My Chevy to the Levee but the Levee Was Dry" by Jaron Lanier from his book "Who Owns The Future".

"The levees weathered all manner of storms over many decades. Before the networking of everything, there was a balance of powers between levees and capital, between labor and management. The legitimizing of the levees of the middle classes reinforced the legitimacy of the levees of the rich. A symmetrical social contract between non-equals made modernity possible.

However, the storms of capital became super-energized when computers got cheap enough to network finance in the last two decades of the 20th century. That story will be told shortly. For now it's enough to say that with Enron, Long-Term Capital Management, and their descendants in the new century, the fluid of capital became a superfluid. Just as with the real climate, the financial climate was amplified by modern technology, and extremes became more extreme.

Finally the middle-class levees were breached. One by one, they fell under the surging pressures of super-flows of information and capital. *Musicians lost many of the practical benefits of protections like copyrights and mechanicals*. Unions were unable to stop manufacturing jobs from moving about the world as fast as the tides of capital would carry them. Mortgages were over-leveraged, value was leached out of saving, and governments were forced into austerity.

The old adversaries of levees were gratified. The Wall Street mogul and the young Pirate Party voter sang the same song. All must be made fluid. Even victims often cheered at the misfortunes of people who were similar to them. Because so many people, from above and below, never like levees anyway, there was a triumphalist cheer whenever a levee was breached. We cheered when musicians were freed from the old system so that now they could earn their living from gig to gig. To this day we still dance on the grave of the music industry and speak of "unshackling musicians from labels."1 We cheered when public worker unions were weakened by austerity so that taxpayers were no long responsible for the retirements for the retirements of strangers.

Homeowners were no longer the primary players in the fates of their own mortgages, now that any investment could be unendingly leveraged from above. The cheer in that case went something like this: Isn't it great that people are taking responsibility for the fact that life isn't fair?

Newly uninterrupted currents disrupted the shimmering mountain of middle-class levees. *The great oceans of capital started to form themselves into a steep, tall, winner-take-all, razor-thin tower and an emaciated long tail*.

How Is Music like a Mortgage?

The principal way a powerful, unfortunately designed digital network flattens levees is by enabling data copying.* For instance, a game or app that can't be easily copied, perhaps because it's locked into a hardware ecosystem, can typically be sold for more online than a file that contains music, because that kind can be more easily copied. *When copying is easy, there is almost no intrinsic scarcity, and therefore market value collapses*.

> *As we'll see, the very idea of copying over a network is technically ill-founded, and was recognized as such by the first generation of network engineers and scientists. Copying was only added in because of bizarre, tawdry events in the decades between the invention of networking and the widespread use of networking.

There's an endless debate about whether file sharing is "stealing." It's an argument I'd like to avoid, since I don't really care to have a moral position on a software function. Copying in the abstract is vapid and neutral.

To get ahead of the argument a little, my position is that we eventually shouldn't "pirate" files, but it's premature to condemn people who do it today. It would be unfair to demand that people cease sharing/pirating files when those same people are not paid for their participation in very lucrative network schemes. Ordinary people are relentlessly spied on, and not compensated for information taken from them. While I would like to see everyone eventually pay for music and the like, I would not ask for it until there's reciprocity.

What matters most is whether we are contributing to a system that will be good for us all in the long term. *If you never knew the music business as it was, the loss of what used to be a significant middle-class job pool might not seem important. I will demonstrate, however, that we should perceive an early warning for the rest of us.* Copying a musician's music ruins economic dignity. It doesn't necessarily deny the musician any form of income, but it does mean that the musician is restricted to a real-time economic life. *That means one gets paid to perform, perhaps, but not paid for music one has recorded in the past. It is one thing to sing for your supper occasionally, but to have to do so for every meal forces you into* ***a peasant's dilemma****.*

The peasant's dilemma is that there's no buffer. A musician who is sick or old, or who has a sick kid, cannot perform and cannot earn. A few musicians, a very tiny number indeed, will do well, but even the most successful real-time-only careers can fall apart suddenly because of a spate of bad luck. Real life cannot avoid those spates, so eventually almost everyone living a real-time economic life falls on hard times.

Meanwhile, some third-party spy service like a social network or search engine will invariably create persistent wealth from the information that is copied, the recordings. A musician living a real-time career, divorced from what used to be commonplace levees like royalties or mechanicals, is still free to pursue reputation and even income (through live gigs, T-shirts, etc.), but no longer wealth.* ***The wealth goes to the central server.***

> *There are laws that guarantee a musician some money whenever a physical, or "mechanical" copy "of a music recording is made. This was **a hard-won levee for earlier generations of musicians**.

Please notice how similar music is to mortgages. When a mortgage is leveraged and bundled into complex undisclosed securities by unannounced third parties over a network, then the homeowner suffers a reduced chance at access to wealth. The owner's promise to repay the loan is copied, like the musicians' music file, many times. So many copies of the wealth-creating promise specific to the homeowner are created that the value of the homeowner's original copy is reduced. The copying reduces the homeowner's long-term access to wealth.

To put it another way, the promise of the homeowner to repay the loan can only be made once, but that promise, and the risk that the loan will not be repaid, can be received innumerable times. Therefore the homeowner will end up paying for that amplified risk, somehow. It will eventually turn into higher taxes (to bail out a financial concern that is "too big to fail"), reduced property values in a neighborhood burdened by stupid mortgages, and reduced access to credit.

Access to credit becomes scarce for all but those with the absolute tip-top credit ratings once all the remote recipients of the promise to repay have amplified risk. Even the wealthiest nations can have trouble holding on to top ratings. The world of real people, as opposed to the fantasy of the "sure thing," becomes disreputable to the point that lenders don't want to lend anymore.

Once you see it, it's so clear. A mortgage is similar to a music file. A securitized mortgage is similar to a pirated music file.

In either case, no immediate harm was done to the person who once upon a time stood to gain a levee benefit. After all, what has happened is just a setting of bits in someone else's computer. Nothing but an abstract copy has been created; a silent, small change, far away. In the long term, the real people at the source are harmed, however."

Excerpt From: Jaron Lanier. "Who Owns the Future?." iBooks. https://itun.es/us/EnUAG.l From digital pages 106-113 or 75-77 in book form.

END

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SECTION D

CUSTOM INFOGRAPHICS

NOTE:

THE LRB ACT IS A PARODY OF THE CRB :)

MUSIC ROYALTY & COPYRIGHT CONTROL 1909-2014

EVERYBODY *BUT* THE SONGWRITERS, MUSIC PUBLISHERS, SOUND RECORDING OWNER, CREATORS, COPYRIGHT OWNERS, HEIRS AND ASSIGNS

Government
Music Lobbyists/Lawyers
Streamers
Banks/Money Supply
PROs - All Royalty Collection

UNITED STATES FEDERAL RESERVE SYSTEM
Founded 1913

Thin Air

GANNETT
Owns BMI

Goldman Sachs
BMI Board of Directors Chair

CENTRAL PLANNING & PRICE FIXING MUSIC COPYRIGHTS

THE WHITE HOUSE WASHINGTON
PRESIDENT
INTERNET RADIO FAIRNESS ACT

UNITED STATES CONGRESS
COMPULSORY LICENSE SINCE 1909
FEDERAL GRANTS

Neil Portnow $1.5M/year
GRAMMYS
Lobbying office since 1998

3 JUDGE
CRB
COPYRIGHT ROYALTY BOARD
COPYRIGHT ROYALTY TRIBUNAL
SINCE 1976

LIBRARY OF CONGRESS

US FEDERAL RATE COURTS

NMPA
Founded 1917

MONOPOLY

Cary Sherman $1.3 - 3.2M/year
RIAA
Created SoundExchange
Founded 1952

P PANDORA
70 MILLION FREE SUBSCRIBERS

iRadio

facebook

AFTRA
SINGERS

AFM
MUSICIANS

CUSTOMER

ALL ACCESS

YouTube

Rhapsody

BMI
Founded 1939

DOJ
CONSENT DECREE 1941

ASCAP
Founded 1914

SESAC
Founded 1930

PERFORMING RIGHTS ROYALTIES
MECHANICAL ROYALTIES

HARRY FOX AGENCY 9.1 CENTS

DIGITAL SOUND RECORDING ROYALTIES

45% TO ARTIST
5%
5%
45% TO RECORD LABEL

soundexchange
Founded by RIAA 2003

Spotify

18-22%
RECORD LABELS STAKE

UNIVERSAL
UNIVERSAL MUSIC GROUP
UMG PUBLISHING

WARNER RECORDS
WARNER CHAPPELL

SONY MUSIC
SONY ATV

MAJOR ARTIST

MAJOR SONGWRITERS
33% 33% 33%
KIDS/ HEIRS KIDS/ HEIRS KIDS/ HEIRS

SONG IDEA
Thin Air
.00012 and .00000012 per stream

INDIE PUB INDIE PUB INDIE PUB
INDIE SONGWRITERS
33% 33% 33%
KIDS/ HEIRS KIDS/ HEIRS KIDS/ HEIRS

INDIE LABEL
INDIE ARTIST

1 MILLION PLAYS / DOWNLOADS/ PERFORMANCES

SONGWRITERS & MUSIC PUBLISHERS SPLIT

BMI™

iTUNES

PANDORA®

$1MILLION

1M TERRESTRIAL
RADIO PLAYS

1 million radio plays through BMI earns the writers and publishers a "Million-Air Award"

"Your Song" - 9 Million-Air Awards
"Wind Beneath My Wings" - 8 Million-Air Awards
"Imagine" - 7 Million-Air Awards
"Come Together" - 5 Million-Air Awards

$91,000

1M ITUNES STORE
SINGLE DOWNLOADS

$60 BUCKS

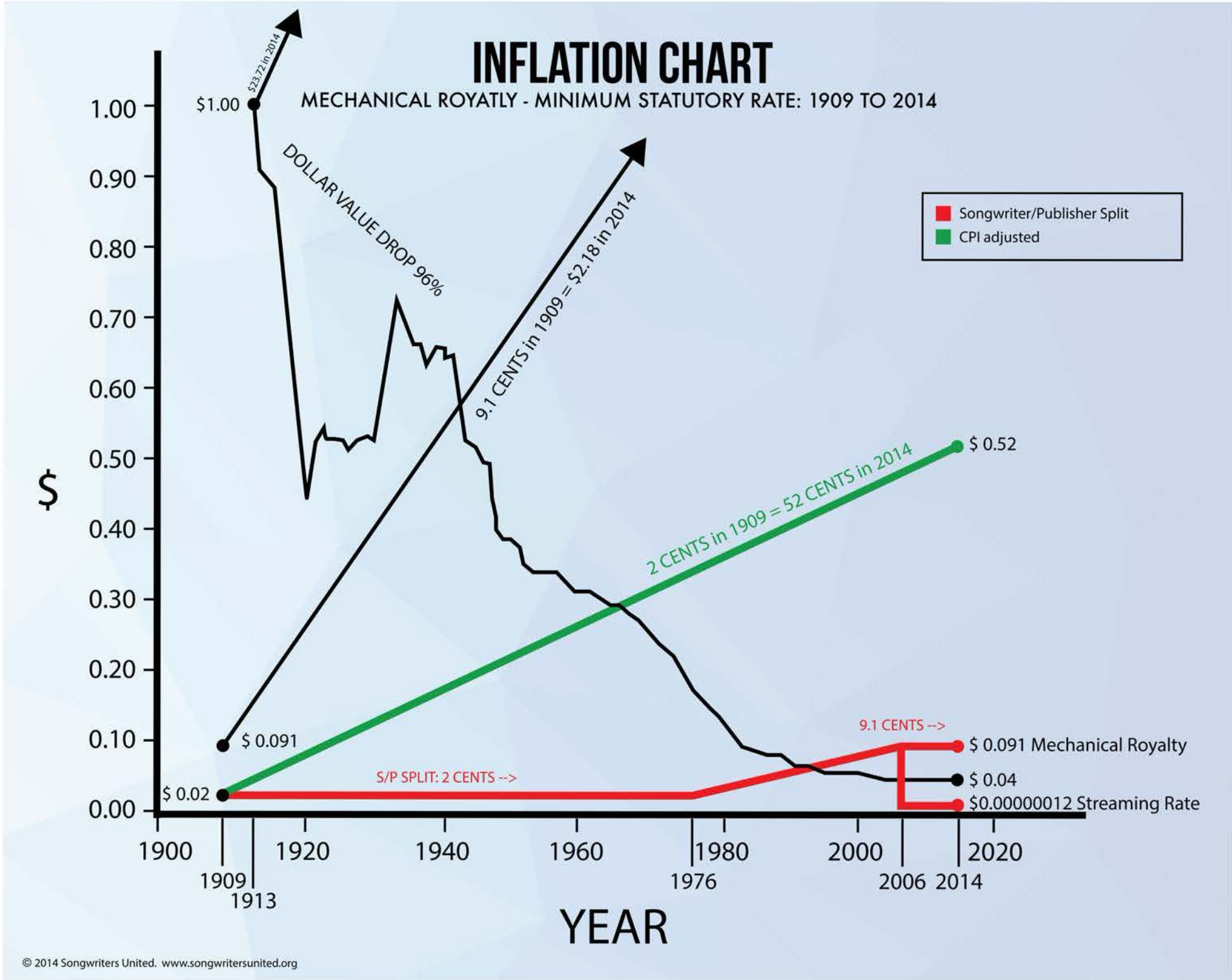
1M STREAMS

Spotify "Harlem Shake" - 500 Million Streams = $25,000

YouTube "Gangnam Style" - 1 Billion YouTube Views = $50,000

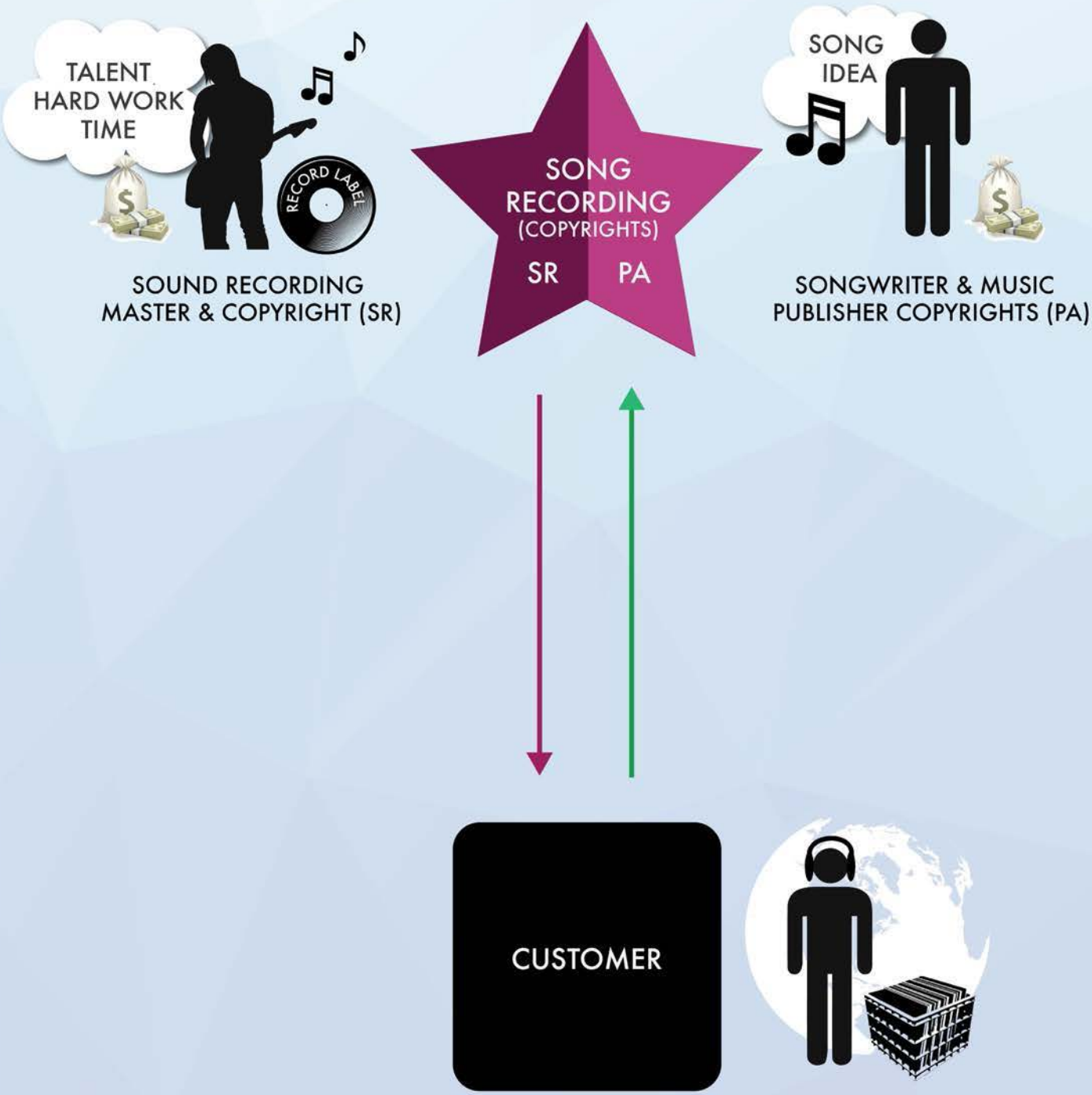
"Here's the situation: If you have a song that gets 1 million plays on traditional radio in a quarter - Taylor Swift or Adele might get that - you're talking $500,000 in royalties for the writer and $500,000 for the publisher. If your song gets 1 million plays on Pandora, you each get $30. The difference is the size of the audience. A song played on traditional radio is heard by anyone tuning in at home or driving their car. If you hear a song on Pandora, you are listening to it alone. But as the Pandoras grow their audiences, royalty rates will go up. We've seen this happen with every new medium."

- Michael O'Neill, CEO of BMI
December 1, 2013, Crain's New York



A TO B - DIRECT LICENSE 1

SONG TO CUSTOMER



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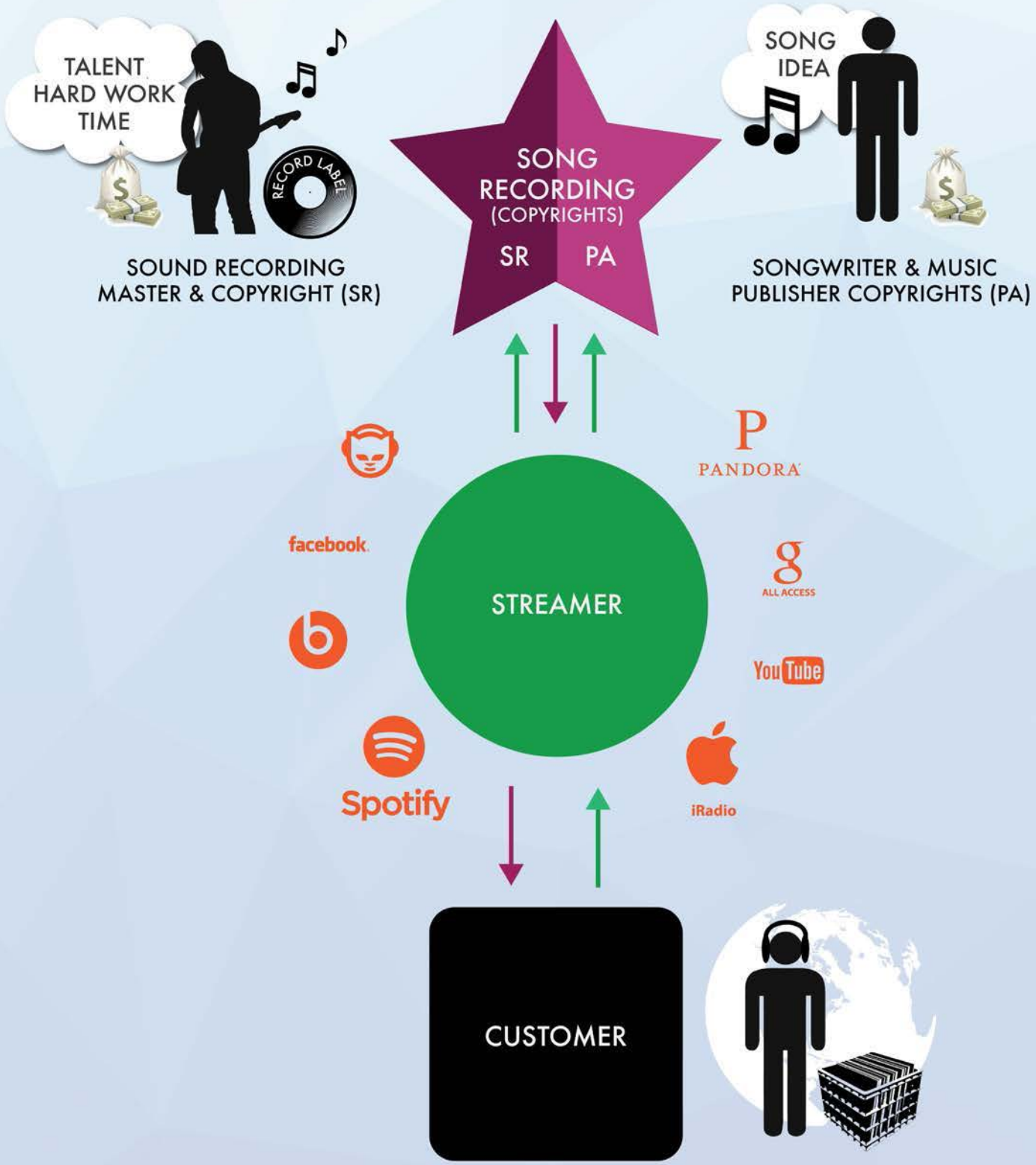
A TO B TO C - DIRECT LICENSE 2

SONG TO STREAMER TO CUSTOMER



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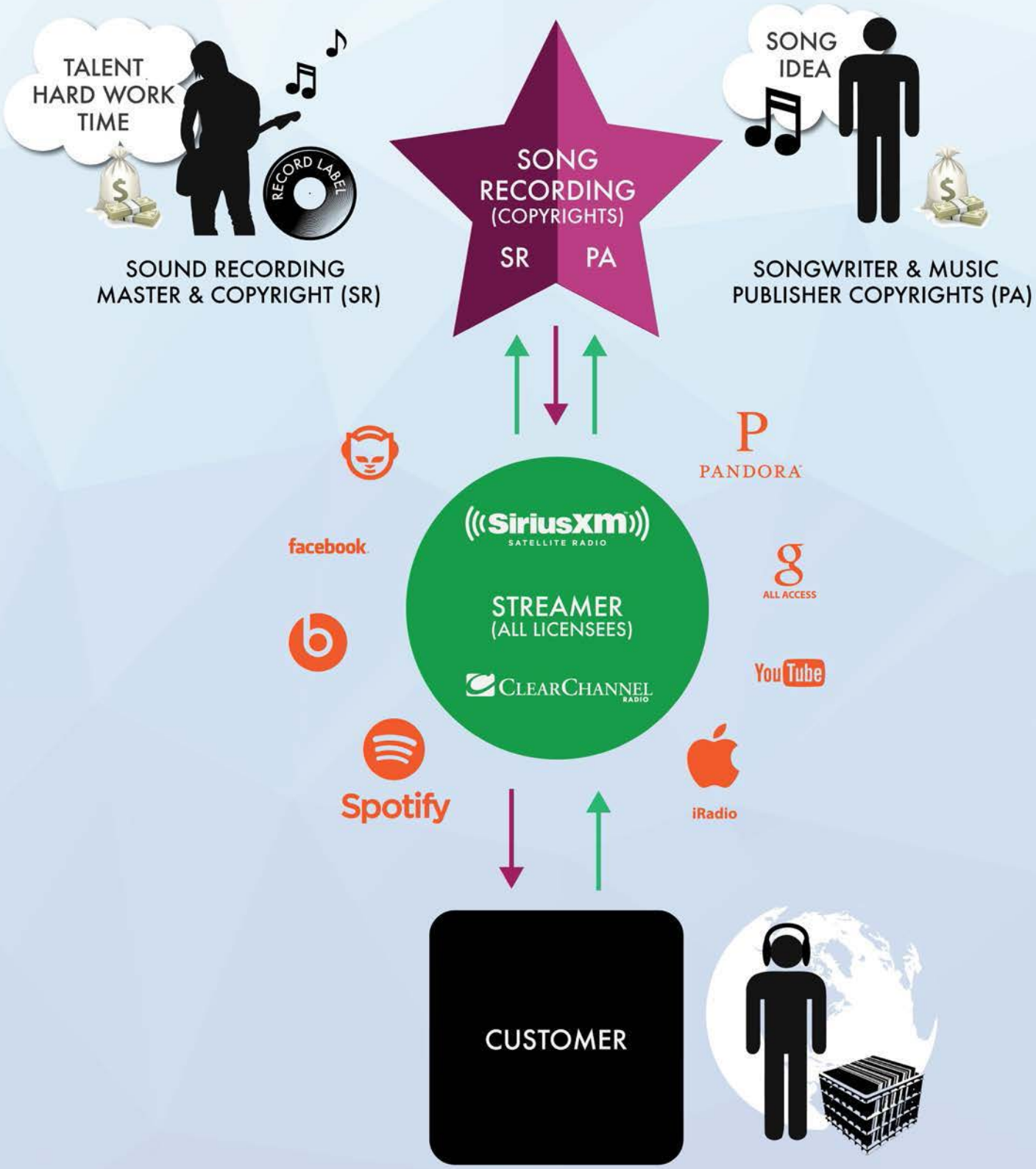
A TO B TO C - DIRECT LICENSE 2-B

SONG TO STREAMER TO CUSTOMER



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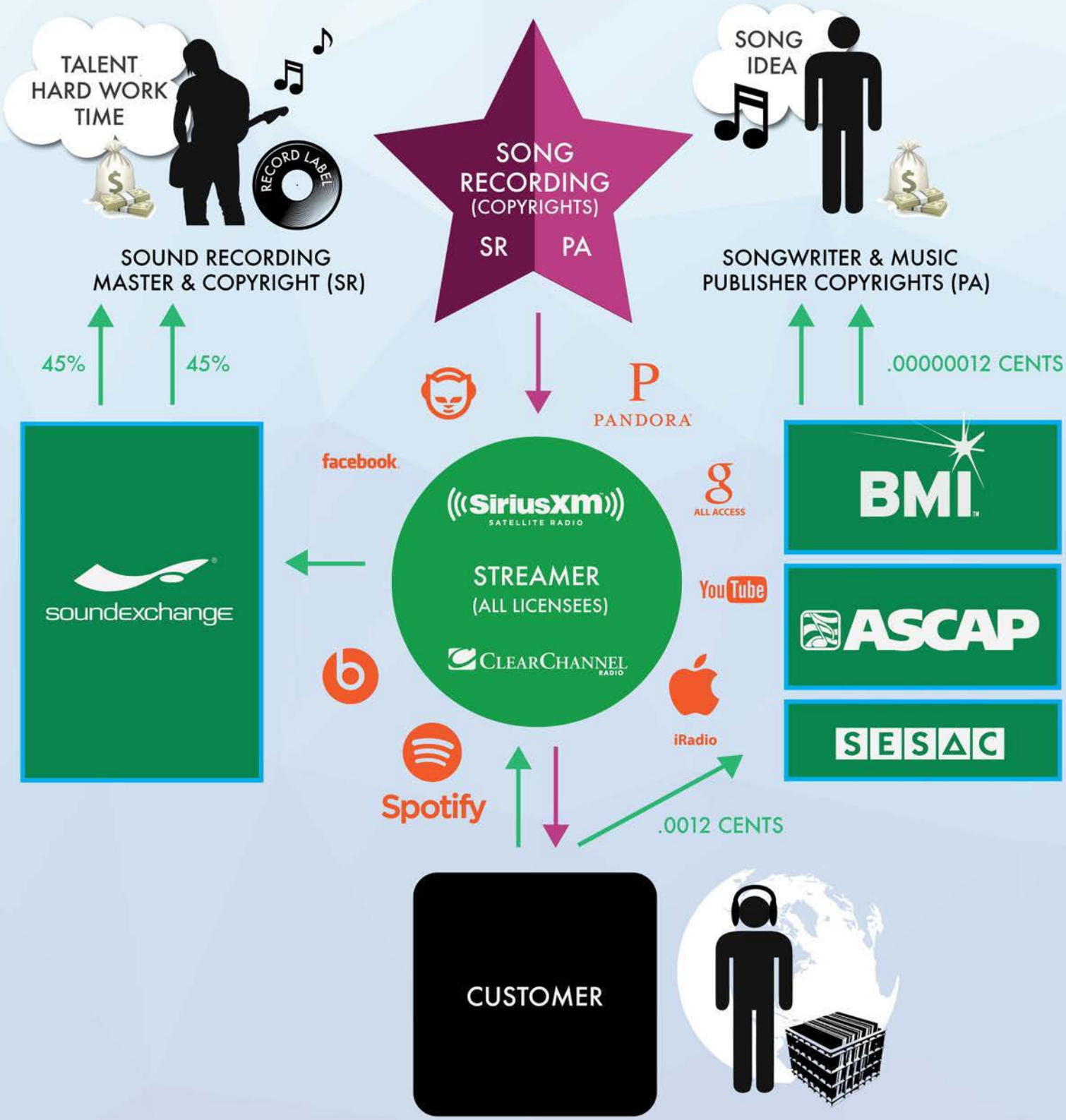
A TO B TO C TO D - CURRENT COLLECTIVE LICENSE

SONG TO STREAMERS (ALL LICENSEES) TO CUSTOMER TO PROS



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[DISCUSSION DRAFT]

113TH CONGRESS
2D SESSION

H.R. _____

To amend Title 2 of the United States Code and Title 28 of The Code of Federal Regulations, to establish a Lawyer & Lobbyist Rate Board or L.R.B federal rate court to set statutory rates for billable hourly rates, to regulate compensation for all attorneys and lobbyists, and for other purposes.

To adopt fair standards and procedures by which determinations of L.R.B. are made with respect to billable hourly rates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to the Committee on Judiciary_____

A BILL

To amend Title 2 U.S.C. Chapter 26, Statute 109 and Title 28, Section _____ of the Code of Federal Regulations, to establish a Lawyer & Lobbyist Rate Board or L.R.B federal rate court to regulate statutory compensation for all attorneys and lobbyists, and for other purposes.

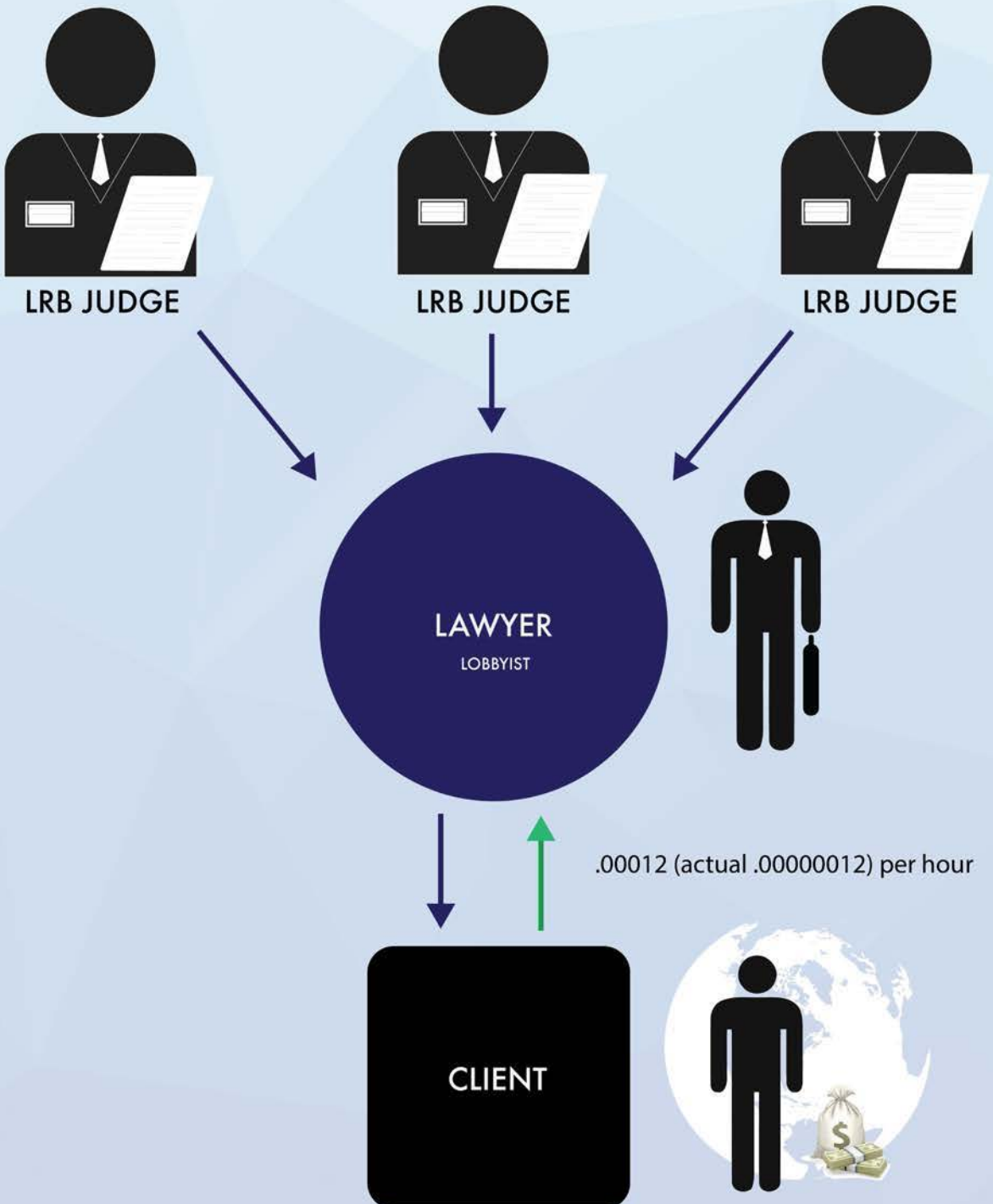
Be it enacted by the Senate and House of Representatives

LRB ACT

LAWYER & LOBBYIST RATE BOARD
NEW LRB SETS LAWYER'S HOURLY RATES

A bill to establish a 3 judge federal rate court know as the LRB - Lawyer Rate Board.
The Act requires the LRB to determine *all* hourly billable rates
at .00012 cents per hour. Must go through third party aggregator. Also includes all lobbyists.
LRB meets once every 5 years to adjust rates.

PREFERRED MODEL FOR LAWYERS



* Top 3 law firms in America are permitted to bill clients at whatever hourly rate they choose.

LRB ACT

LAWYER & LOBBYIST RATE BOARD
NEW LRB SETS LAWYER'S HOURLY RATES

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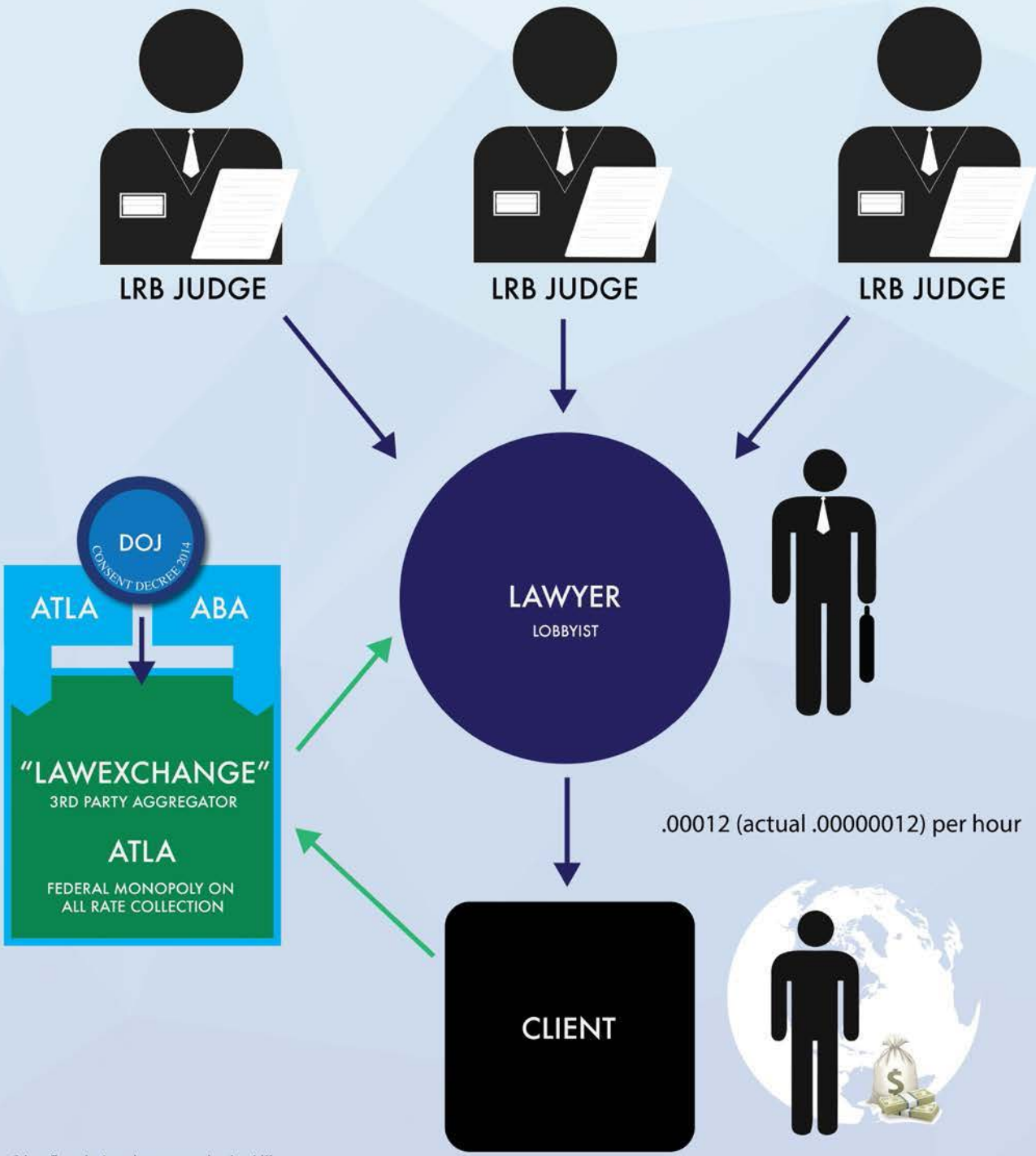
The Act requires the LRB to determine *all* hourly billable rates
at .00012 cents per hour. Must go through third party aggregator. Also includes all lobbyists.
LRB meets once every 5 years to adjust rates.

PREFERRED MODEL FOR A.T.L.A. AND A.B.A. LOBBYISTS



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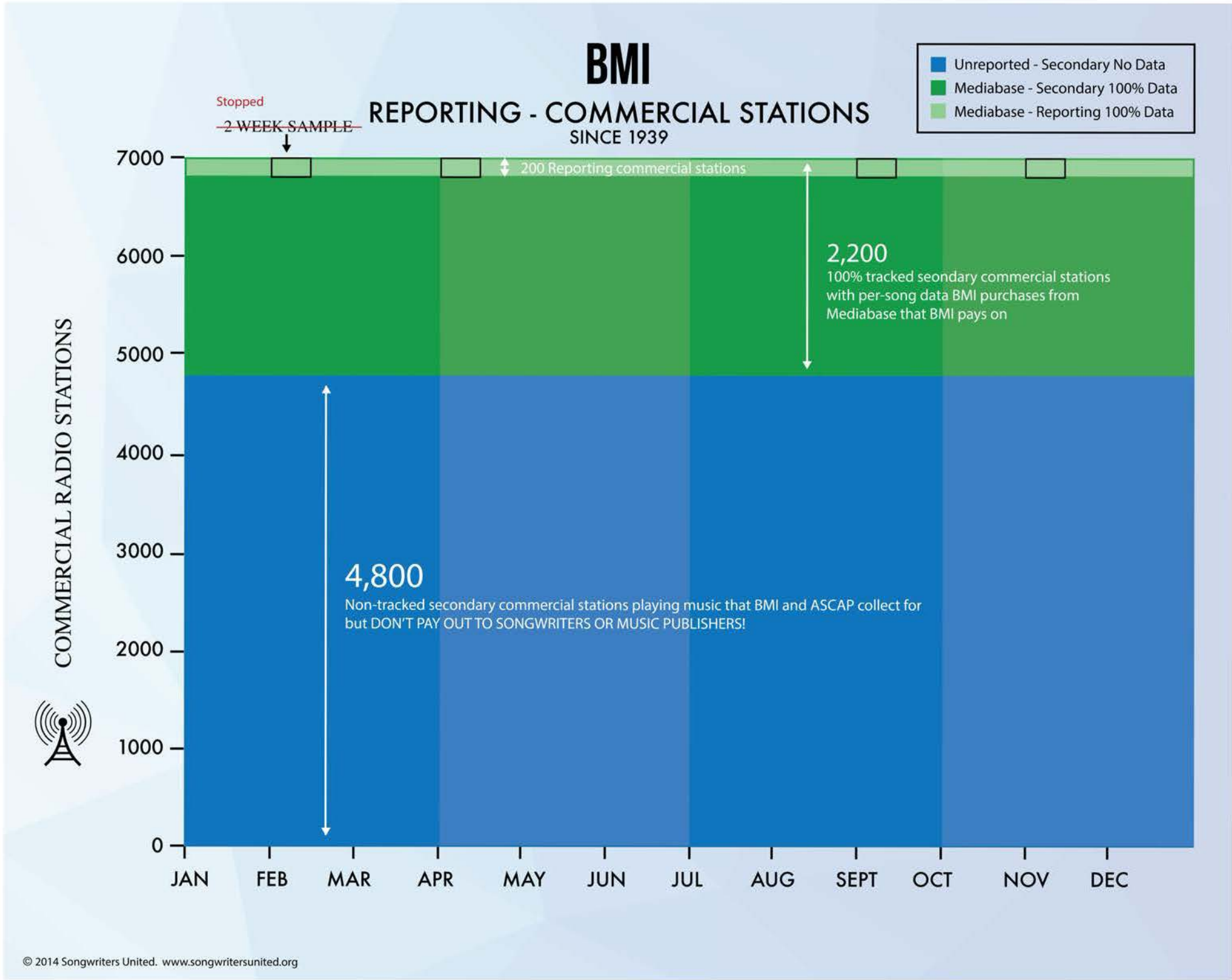

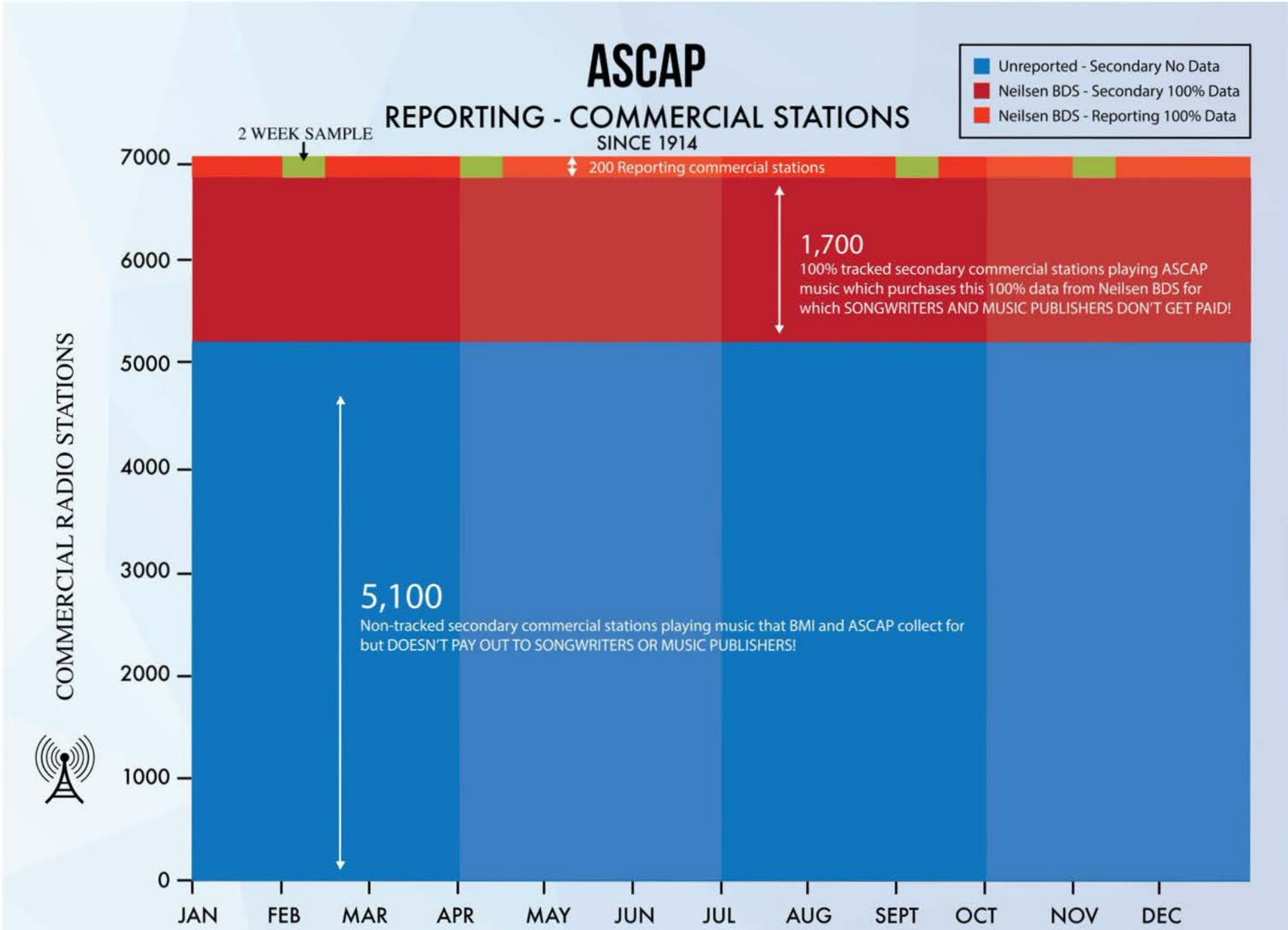

"It really is about fairness. Today, if your song and my song are played side by side and get sampled we'll both be paid the same amount. And ... if your song and my song are played side by side and are NOT sampled, we'd still get paid the same amount, *but this time the amount would be zero*. "

"You don't pay $1.25 to collect $1.00 ... you don't pay $1.00 to collect $1.00."

- Dean Kay, *ASCAP Board of Directors, "That's Life" songwriter - October 2013*