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RE: American Society of Composers, Authors and Publishers/Broadcast Music, Inc. Antitrust Consent Decree Review

Comments From The Church Music Publisher's Association, Inc.

I. Introduction:

Founded in 1926, the Church Music Publisher's Association, Inc. ("CMPA") is an organization consisting of publishers of Christian music ([www.cmpamusic.org](http://www.cmpamusic.org)). The membership includes those publishers of nearly every major church denomination, the affiliated music publishing companies of every major contemporary Christian and Gospel record label as well as music publishers who are involved in educational markets. The CMPA membership shares mutual areas of concern regarding copyright laws and protection, education and the licensing, administration and collection of royalties as well as the need to facilitate public and industry awareness in these areas. The CMPA is an interested party to these proceedings and below provides the DOJ with its opinion as to whether the ASCAP and BMI Consent Decrees are effective and necessary in our fast-changing industry.

II. Do the Consent Decrees Continue to Serve Important Competitive Purposes Today?

Because of the rapid change in technology, the societies have begun to experience complications in regards to its negotiations with "new media" music services, i.e., music performed over the internet and through wireless networks. Because of outdated consent decree requirements these licenses are compulsory and fees may be set retroactively, some music users are delaying the negotiating process,

choosing to license music on an interim basis for an indefinite period, thus reducing in many cases the users' license fees paid to songwriters and publishers. ASCAP and BMI are sometimes forced to accept less favorable outcomes due to limited resources in the very expensive rate court proceedings. The CMPA believes collective licensing through the performing rights societies has significant efficiencies for both the creators and users of music and most importantly, the individual songwriters and small music publishing businesses that would not otherwise have the resources to navigate the complex legalities of music licensing. The performing rights societies free the individual members from the enforcement of licensing agreements and royalty collection obligations, thus giving its members the ability to focus their attention on creating and exploiting music.

III. What, if any, Modifications to the Consent Decrees Would Enhance Competition and Efficiency?

Problems with the current rate-setting process and the inability of the societies to offer bundled rights to music users have led to copyright owners licensing their works directly to music users. In particular, due to the restraints in the Consent Decrees, many ASCAP and BMI members believe that licensing their compositions through ASCAP and BMI does not allow them the opportunity to realize the full value of their copyrights, particularly with respect to the use of their works by streaming music services. The rates that ASCAP and BMI are able to obtain from certain music users (specifically new media services) do not represent fair market value for the use of their compositions. Consequently, many publishers recently sought to withdraw certain categories of rights from the PROs with the intent to directly license these services. However, recent court decisions have interpreted the consent decrees to prohibit publishers and songwriters from withdrawing certain rights while allowing other rights to remain with ASCAP and BMI. The consent decrees should be modified to allow publishers and songwriters the right to directly license certain categories of performance rights while allowing ASCAP and BMI the right to license other performance rights categories.

IV. 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?

CMPA has at times found it difficult to understand the calculation methods utilized by the performing rights societies in determining how music performance income is collected, calculated and ultimately disbursed to the CMPA membership. The CMPA believes that ASCAP and BMI should be more transparent in how they account to writers and publishers for performance income, such that the average person can understand these calculations.

- V. Should the Consent Decrees be Modified to Allow Rights Holders to Permit ASCAP or BMI to License Performance Rights to Some Music Users but Not Others? If Such Partial or Limited Grants of Licensing Rights are Allowed, Should There Be Limits on How Such Grants are Structured?

The CMPA encourages modifications to the consent decrees to the extent they grant both music publishers and the PROs the ability to negotiate competitive rates in the free market and receive their royalties more quickly.

- VI. 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?

Expedited arbitration proceedings potentially serve two purposes. First, both music creators and music users benefit from a more definite timeline and generally a less expensive resolution of fee disputes. Arbitration promotes the resolution of private rate disputes without unnecessarily burdening the courts with complex, industry-specific issues. Further the amount of time necessary for determination of a final outcome is shortened. The CMPA believes expedited arbitration may eliminate the need for interim fee proceedings altogether.

- VII. Should the Consent Decrees Be Modified to Permit Rights Holders to Grant ASCAP and BMI Rights in Addition to “Rights of Public Performance”?

The CMPA takes no position on this issue.

#### VIII. Conclusion

The performing rights societies have historically created an efficient licensing marketplace. However, new innovations have shown that outdated regulations restrict the societies’ ability to efficiently license the rights for the use of songs to music users on behalf of songwriter and publisher members. The CMPA believes the goal of the societies should be to provide competitive compensation for the use of their members’ musical works. Unfortunately, without substantive changes to the Consent Decrees, many of the larger copyright owners may soon abandon the collective system provided by the PROs with the goal of achieving competitive rates on their own. We strongly believe that it is in the best interest of all parties concerned: music users, creators, and copyright owners to preserve the efficiencies offered by the Performing Rights Organizations in bulk licensing, negotiation and transactional cost savings. Failure to address and solve the problems and inequities currently caused by the Consent Decrees will result in copyright owners withdrawing from ASCAP and BMI, thus making it even more difficult for the music users to search and license the music they need. The ensuing result will be many unlicensed performances, more creators and copyright owners not being paid and

more lawsuits being filed. Therefore, the CMPA encourages the DOJ to consider modifying the ASCAP and BMI Consent Decrees.

The Church Music Publisher's Association and its Board looks forward to responding to any additional issues or questions the DOJ may have in this timely examination of the ASCAP and BMI Consent Decrees.

Sincerely,

/Dale Mathews/

Dale Mathews  
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cc: Elwyn Raymer, President  
Church Music Publisher's Association Action Fund

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