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By e-mail: [ASCAP-BMI-decree-review@usdoj.gov](mailto:ASCAP-BMI-decree-review@usdoj.gov)

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

RE: PRO Licensing of Jointly Owned Works

Dear Mr. Kully:

The Antitrust Division is wasting valuable time and effort in this particular inquiry by investigating a contrived and substantively non-existent controversy. There should be no misunderstanding or challenge as to the right of authors to create songs either individually, or in collaboration jointly with other authors - with each creative contributor retaining their respective ownership share or interest in the resulting copyright - and thereafter to affiliate with any PRO of their choosing to act as the licensing agent for that author's whole or fractional interest in such copyright for granting public performance rights.

The Division's solicitation for comment infers that there is some inherent misrepresentation or impropriety if a single PRO licenses to broadcasters anything less than the entire 100% interest in one or more authors' personal property (i. e., a song copyright). This is incorrect, a misdirected use (however well-intentioned) of government authority and resources, and ultimately a waste of taxpayer funds.

The Joint Work Doctrine is not compulsory on authors or copyright owners, but is elective and voluntary. Its application has been almost universally rejected by longstanding music industry custom and practice.

Indeed, the Joint Work Doctrine exists nowhere in the world other than United States, and there is no credible evidence to support the theory that its absence impedes the public's access to music or the process of public performance licensing to broadcasters domestically, or for that matter, anywhere in the world.

The United States has a consistent policy of harmonizing its copyright and trade practices with those

of other nations through its treaties, conventions and by other mechanisms. The Joint Work Doctrine is inconsistent with the norms of the international copyright community. That is, in part, why neither American nor foreign authors give practical effect to it, or wish to do so in the future.

There is no evidence to support the theory that a PRO whose repertoire includes both whole and fractional copyright interests within its repertoire, is therefore deceptive or misleading to broadcasters or to any licensee. On the contrary, all PRO song databases are publicly accessible, free of charge to use and indicate the affiliation of the authors and music publishers of the works that PRO represents, either in whole or in part. Using those databases, it would be very difficult for a person of reasonable intelligence to even accidentally misconstrue which authors wrote a particular song, or which PRO any of the authors are affiliated with.

Fortunately, songwriters have a choice in selecting which PRO will be represent them in the licensing of their performing rights. Presently, there are four PROs in the United States, and there may be five in the near future. No PRO is obscure or difficult to find for broadcasters and others seeking music licenses.

Ironically, higher levels of concentration exist in many American industries other than performing rights. In those instances, the leading companies conduct business unfettered, without consent decrees.

With respect to the subjects of this review, the broadcast industry has been operating under the same music licensing principles almost since its inception. The existence of co-authored works which may be represented by more than one PRO is a neither a genuine surprise nor revelation to anyone in either the music or broadcast industries. To suggest otherwise is simply frivolous and disingenuous.

Perhaps more to the underlying point of those who have set this review in motion, broadcasters do not pay more in music licensing fees for public performance rights as a result of multiple authors collaborating in the writing a single song, or because each such authors may all affiliate with completely different PROs.

Any personal property which is owned by one or more parties is subject to the very same or nearly identical considerations to those which operate in the licensing and use of copyrights, regardless of the various types or nature of works created.

Thank you for considering my point of view.

Sincerely,

Thomas A. White