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 Publisher/Broadcast Music, Inc.	)	**Consent Decrees - 2015 PRO Licensing of Jointly Owned Works**

Emailed to ASCAP-BMI-decree- review@usdoj.gov

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

COMMENTS BY SONGWRITER GEORGE JOHNSON ON JOINTLY OWNED WORK

George Johnson ("GEO") respectfully submits to the Department of Justice the following Comments on their Antitrust Consent Decree Review and second round of public comments concerning Performing Rights Organizations ("PRO") Licensing of "Jointly Owned Works" through the American Society of Composer, Authors and Publishers ("ASCAP") and Broadcast Music Inc. ("BMI"). GEO participated in the first round of comments[1] and also agrees 100% with BMI's comments in their new letter[2] to the DOJ on Jointly Owned Works submitted today.

Let me assure the DOJ Antirust Division that this *is a colossal mistake* and a *clear power grab* by Licensees with no standing in copyright law, only the copyright creators and owners

[1] http://www.justice.gov/sites/default/files/atr/legacy/2014/09/24/307869.pdf

[2] http://www.bmi.com/advocacy/doj_letter

have standing. We pray the DOJ leaves Jointly Owned Works alone and relaxes the Roosevelt Administration consent decrees in every manner, even abolish them, yet hold PROs to account.

It's really unfortunate the DOJ *will not seriously consider abolishing* the consent decrees since they only hurt the millions of songwriters and publisher members, so we pray the DOJ can abolish the byzantine 1941 decrees in exchange for an experiment in real free-market licensing.

If the DOJ goes ahead with their plan to 100% license and destroy the American songwriter, *it will also destroy ASCAP and BMI*, which actually may be *the best outcome* since the PRO's are becoming irrelevant and will continue to be, while stuck on this current path.

Additional federal intervention on behalf of billionaire streamers in an already heavily over regulated federal statutory, compulsory marketplace, for music and songs, is pure folly.

The copyright owners actually *need the protection of the DOJ* from streaming companies now more than ever and we ask for your help to *stop streamers from using the force of government,* like the 1941 consent decree, t*o ensure their billions in revenues while keeping us at $.000000012 cents* for a Spotify stream thought BMI.

The DOJ should protect us from streaming companies, *not protect streamer executives millionaires from innocent American songwriters — with or without a PRO*.

Most publishers will only block any attempts by co-writers or co-publishers to 100% license their property against their wishes and for no money or forced "below market value".

GEO was the only music publisher in America to sign the BMI Digital Rights Withdrawal Addendum *and* still fully 100% leave BMI, right after Judge Stanton's decision.

GEO's decision to partially withdrawal and then leave was the correct one in hindsight.

Since GEO has left both BMI and ASCAP *because of the consent decrees*, recent rate court decisions, harassment by Pandora attorneys, and below market rate courts, I am now "*consent decree free*" and will stay that way no matter the Department's decision on Jointly Owned Works or the Consent Decrees. I do feel bad for my fellow songwriters and publisher friends still trapped in BMI and ASCAP and why I am commenting today. However, many hit writers are already leaving ASCAP and BMI because of the DOJ's misguided policies.

CLEAR COPYRIGHT INFRINGEMENT

The obvious question is: since 100% licensing *is in clear violation of the copyright clause, Title 17 U.S.C §106's exclusive rights,* First and Fifth Amendment copyright protections, and the DOJ knows this, *why is the Department still so intent on remaining willfully ignorant of basic copyright law and IP law* while pushing through this ill conceived plan to only benefit licensees like Pandora, Google, Apple and Spotify — not copyright creators and licensors?

To me, it's unclear why partial withdrawals *prompted the need to license songs using 100% licensing* and the only logical reason for this is to give Google, Apple and Pandora what *they* want — access to free songs at the expense of exclusive rights and the creators' livelihoods.

Haven't these anti-copyright song pirates already done enough damage to songwriters' livelihoods the past 20 years at $.00 nothing? The Department has to recognize that this power grab by licensees will only further destroy the music copyright, songwriting and music publishing royalties even more so than the 1941 consent decree you are "reviewing".

It is self-evident that the 1941 Roosevelt decree should be abolished after 75 years and *should sunset next year* — all the while still keeping tabs on ASCAP and BMI, who could care

less about their membership, *but without further destroying the members as the decrees already have*.

But since these important decisions are not being made by the copyright owners but by "progressive" lawyers, DC lobbyists, politicians, licensee attorneys, and Silicon Valley hacker kids who have never held a guitar in their hand much less written a song, no wonder the system is as debauched as it is today. Now, the DOJ plans set fire to the creative process of writing songs by involving itself where it has no right and does not belong - then reduce our royalties?

WHY IS THE DOJ INVOLVED IN THE WRITING OF MY SONG?

Most importantly, *why is the DOJ involved in my decision as to who I pick as my co-writer?* Which for the majority of writers will be based upon what PRO they are signed with?

I will no longer co-write for the most part because of this and if I do, it will be with a SESAC writer but preferably a songwriter who is non-affiliated, then only record those songs.

It's beyond my comprehension why the federal government wants to destroy the songwriting process even more, especially since it's price-fixed the music industry since 1909?

We are 100% controlled by the federal government while the DOJ allows streaming companies like Pandora, Google, Spotify and others to legally steal our two music copyrights at $.00 cents per-performance in absolute violation of copyright law's Title 17 and the copyright clause. Now, the best idea the DOJ can come up with is telling us who we are going to write songs with while simultaneously destroying what little streams of revenue we have left.

As David Lowery says[3] on his blog, "When you write a song with another songwriter, do you ask them "Who's your PRO?" Never, right?" DOJ attorneys have just made themselves the

[3] http://thetrichordist.com/2015/11/18/call-to-action-the-department-of-justice-is-assaulting-songwriters-yet-again/

laughing stock of Facebook and the music industry, so it may be time to pull back on the broken consent decrees instead of making them even more restrictive, illogical and broken.

100% licensing defies common sense and Copyright Law 101.

INTERIM SOLUTIONS

What the Department should be concentrating on is stopping ASCAP from 2 week sampling terrestrial radio, then stop 30 day limited downloads in 37 C.F.R 385.11, both of which are a blatant violations of copyright law and property rights, The DOJ would better served plugging these loopholes in the Act that are abused by streamers and real copyright infringement.

In addition, as long as streamers like Pandora and Google don't negotiate in a free market rate in dollars, not nano-pennies with six zeros to the right of the decimal, the music industry royalty system is over for good. The DOJ could act to force streamers to negotiate with ASCAP and BMI, but instead we all are forced to rely on rate courts that produce $.00000012 for a real world Spotify stream though BMI, that is split by 3 songwriters and three publishers!

How do you split a $.00000012 cents royalty among 6 exclusive rights holders,? You can't and all as a result of the failed DOJ consent decree.

How would all the DOJ attorneys like to get paid $.00000012 cents per hour or day and have five Judges set your rate at literally zero?

How would you eat or feed your family and would you be forced to quit the job you love? The DOJ is *intentionally forcing songwriters and their publishers out of business to benefit Licensees*. Again, if the DOJ really wants to help they will abolish 30 day limited downloads, keep partial withdrawals and stop 100% licensing, abolish 2 week sampling at ASCAP and force streamers to negotiate, not further stream our art for free.

Otherwise, just abolish the consent decree since it IS the problem, but we know this.

There is absolutely no logical reason to change what is working and then adopt a foolish 100% licensing policy that would also violate copyright law in §106 of Title 17 and the copyright clause's exclusive rights found in Article 1, Section 8, Clause 8, the 5th Amendment right to property and other U.S statutes. But the Department of Justice should know this already? Right?

So, why put all American music creators through this ill-conceived scheme? Just to help Silicon Valley and their DC lobbyists at the expense of American music? Music *is* innovation.

The President and Department of Justice can't unilaterally change copyright law, the copyright clause in the Constitution, Copyright Acts passed by Congress, or the Fifth Amendment. These actions will only destroy the exclusive right to our songs, the creative process, and our livelihoods with more and more government intervention and unconstitutional political chicanery to help Google and Apple.

Will Pandora or Apple set up their own record companies now or merge with or buy out Vivendi Universal in France, Access Industries Warner Brothers in Russia, or Sony Japan so they control 100% of the licenses in the American songbook plus all new American music creations on their new streaming companies worldwide? Especially when the 3 Major Foreign Labels have been given stock worth billions, then fixed the creator at $.00 cents per U.S. copyright?

These anti-trust violations don't even exist anymore since in 1939 and 1941 there was only *one music copyright* and *one PRO*, and it was 75 years ago? As Abraham Lincoln famously said about exclusive rights in general, "*each individual is naturally entitled to do as he pleases with himself and the fruit of his labor.*" or "*I always thought the man that made the corn should eat the corn.*"

That is why I have already left BMI and ASCAP as a publisher and will never sign with them again. I am a free agent, "consent decree free" and can collect my royalties just fine.

So, I'm with singer/songwriter/professor David Lowery when he says go ahead and 100% license. I know I'll sit back and watch the DOJ and President destroy ASCAP and BMI since Jointly Owned Works is about the only thing working in music today.

HISTORICAL EVIDENCE

As mentioned above, the number one historical fact surrounding the origin of the 1941 consent decrees, that *prompted the decrees* and the formation of Broadcast Music, Inc., aka angry broadcasters in 1941, was because there was:

A. Only *one* music copyright at the time, the §115 musical work or underlying composition and:

B. Only *one* performing rights organization at the time ASCAP, so there's a reason 75 years ago

But, since 1971 there has been the federal recognition of the analog sound recording.

So, for 45 years now there have been *two competing music copyrights* and since 1939 and 1941 *three competing PRO's*. Therefore, these two monopolies in 1941 no longer exist - the one copyright and the one PRO.

BMI and SESAC have been competing with ASCAP since really 1939 and 1941 and since 1971 there has been a competing §114 copyright.

Hypocritically, the PRO for §114 sound recordings created in 2004 *has a 100% government granted monopoly, but the DOJ has no anti-trust concerns about Soundexchange?*

Why is the DOJ not concerned about the RIAA created SoundExchange which astroturfs for, and was created by, the 3 Major American Labels that are now, no longer based and headquartered in the United States, but in France, Russia and Japan — hacking the U.S. rate?

Why are non-music copyright creators and anti-copyright attorneys, who have never held a guitar in their hands, deciding the profit, control and fate of all American music copyright creators, especially when the law says those authors have an *exclusive right* in the Constitution and 17 U.S.C § 116 of the Copyright Act?

Simply because I signed the digital withdrawal form on September 13, 2013 with BMI, I've been subjected to a complete waste of time and money, all because of the worthless consent decrees and endless federal intervention into music makers lives, careers and mainly pockets.

Why doesn't the Department investigate, prosecute and stop Pandora for the $500 million in profits they have taken for top executives, directors and shareholders the past 5 years, $40 million to CEO Tim Westergren[4], pleading poverty and "losing money" but buying companies?

Why doesn't the Department investigate, prosecute and stop Spotify for knowingly holding streaming royalties in the hundreds of millions of dollars[5] for billions of performances[6]?

Why doesn't the Department investigate, prosecute and stop Google who owns Youtube for massive distribution of illegal activities including terrorism training, jihadi recruitment, and providing material support, etc.[7] right to your living room and for your children too?[8]

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[4] http://www.secform4.com/insider-trading/1230276.htm

[5] http://thetrichordist.com/2015/10/26/smoking-gun-spotify-accrued-fees-to-copyright-holders-now-at-146-million/

[6] http://thetrichordist.com/2015/11/09/letter-to-the-new-york-attorney-general-asking-for-investigation-of-unpaid-royalties-at-spotify-and-youtube/

[7] https://musictechpolicy.wordpress.com/2015/02/08/straight-out-of-rosedale-mississippis-sudden-interest-in-limiting-state-lawsuits-while-google-sues-attorney-general-jim-hood/

[8] https://musictechpolicy.wordpress.com/?s=youtubeistan

Why doesn't the Department investigate and prosecute Google for selling billions of dollars in advertising to major brands on copyright infringing and clearly illegal sites[9]?

GEO'S COMMENTS ON THREE EXAMPLES OFFERED BY DOJ

1. The organizations' licenses grant users the rights to play works, not interests in works. For example, BMI's model license for bars and restaurants promises "[a]ccess to more than 7.5 million musical works" and grants to the user "a non- exclusive license to publicly perform . . . all of the musical works of which BMI controls the rights to grant public performance licenses during the Term." Similarly, ASCAP's Business Blanket License grants the right to perform "non-dramatic renditions of the separate musical compositions now or hereafter during the term of this Agreement in the repertory of SOCIETY, and of which SOCIETY shall have the right to license such performing rights."

   First, the PRO's do not grant *rights* to users to play works, they grant licenses to the user for the privilege of playing or performing works, not rights to play. Users have no rights, only the copyright creators and owners have rights to the works.

   Second, BMI may say they control the rights but they are only re-licensing or licensing the works, just like the users or licensees. Same for ASCAP's "SOCIETY" since copyright is based on the individual work and the individual per-performance. Groups or SOCIETIES don't have rights, only the individuals in those groups do.

   Third, and most important, the problem is not collective blanket licensing, it's *forced government collective blanket licensing at $.00 cents,* that is the problem.

   If the rate was an actual real dollar rate other than *literally zero per individual performance*, a lot of this would go away.

   But the federal government insists in interfering with 2 rate courts and a Copyright Royalty Board to set this rate at zero, then add the outdated 75 year old FDR administration consent decree for — one music copyright and one PRO at the time. Now add the forbidding of partial withdrawals of members, then this 100% licensing push to only benefit Google and licensees and you have the perfect storm for American music creators in 2015. We might need the Coast Guard instead.

   When the mechanical rate that goes from 2 cents in 1909 then to .00000012 cents in 2015, tell me how that is progress or a living wage?

   Do songwriters at least deserve $15 dollar an hour at a minimum wage? The "minimum statutory wage was supposed to be a MINIMUM on a mechanical. A stream *is a mechanical and a performance at the same time*, but the DOJ let the lobbyists at the

[9] https://musictechpolicy.wordpress.com/2015/01/07/google-may-continue-driving-traffic-to-pirate-sites-after-dmca-notices-by-using-its-google-alerts-product/

RIAA, who's concern is only §114 sound recordings, *set the rate for all §115 works at $. 00 nothing instead of 9.1 cents* (which should be paid at least one time before streaming the work endlessly, and still the law in my opinion). Factor in CPI inflation from 1909 and 2 cents is 52 cents in 2015. Innocent songwriters need the DOJ's help, not Google and Apple lobbyists.

2. ASCAP and BMI often describe their products in ways that would be inconsistent with a license that provided something other than the right to play all works represented in their repertories. For example, in its submission to the Antitrust Division in response to the 2014 request for comments, ASCAP explained: "Licensees are, through a single license with a single entity, authorized to perform any or all of the millions of songs in ASCAP's repertory (including additional songs that enter the repertory during the term of the license and countless foreign works). Without ASCAP and other PROs, music users that perform more than a handful of musical works would face the prohibitive expense of countless negotiations with a multitude of copyright owners." In its own submission, BMI noted that "[u]nder the BMI decree, upon written request for a license, a licensee has an automatic right to use any, some, or all of BMI's music."

   That is ASCAP and BMI's problem, not the member copyright creators' problems. With computers today, it's not a prohibitive expense if they really want the songs.

   Most importantly, to the question at hand, *the lowering of transaction costs* with a multitude of copyright owners is EASILY solved by letting ASCAP and BMI NEGOTIATE with Pandora and all other on-demand and non-demand streaming licensees in a real free-market without the DOJ interference.

   When the two parties come back with a deal, the DOJ can check it for any anti-trust concerns you have and fix any minor concerns, that's it.

3. The Consent Decrees themselves describe ASCAP's and BMI's licenses as conveying the rights to play all works in each organization's repertory. The ASCAP decree requires ASCAP to "grant to any music user making a written request therefor a non-exclusive license to perform all of the works in the ASCAP repertory . . . ." The BMI decree describes BMI's licenses as providing access to "those compositions, the right of public performance of which [BMI] has or hereafter shall have the right to license or sublicense." The Second Circuit's 2015 *Pandora* decision states that ASCAP is "required to license its entire repertory to all eligible users."

   This is exactly why the DOJ should abolish their stranglehold on American music creators who are members of ASCAP and BMI by abolishing the consent decrees and let real willing buyers and real willing sellers work it out like negotiations have always been.

   Central planning and price fixing by decree to control all music in America is folly and the reason the consent decrees is falling apart 75 years later. This is a hard truth to admit.

ANSWERS TO SIX QUESTIONS POSED BY DOJ

1. Have the licenses ASCAP and BMI historically sold to users provided the right to play all the works in each organization's respective repertory (whether wholly or partially owned)?

   Yes, *but only by government force*, not voluntary agreement and certainly not in a fair nor free-market. Again, only a question asked from the standpoint of a Licensee.

2. If the blanket licenses have not provided users the right to play the works in the repertories, what have the licenses provided?

   An income for BMI and ASCAP executives, health benefits, enormous salaries, taking home $400 dollar meals to their family every day on the BMI songwriter tab, etc.

   As said above, they provide the user a limited non-exclusive license with the privilege to play works but not at real market prices but suppressed government royalty rates.

3. Have there been instances in which a user who entered a license with only one PRO, intending to publicly perform only that PRO's works, was subject to a copyright infringement action by another PRO or rights-holder?

   I have no idea and it doesn't matter since all of these questions are from the standpoint of what Apple, Google/Youtube, Pandora and iHeartMedia want, and at the further expense and control of music creators.

   Show me one time where the DOJ has stood up for songwriter's exclusive rights in the Constitution copyright clause or Title 17 U.S.C. §106(1 to 6)?

4. Assuming the Consent Decrees currently require ASCAP and BMI to offer full-work licenses, should the Consent Decrees be modified to permit or require ASCAP and BMI to offer licenses that require users to obtain licenses from all joint owners of a work?

   Yes, absolutely and if not, he DOJ is guilty of basic copyright infringement. How could one not get permission from all copyright owners when that is what Title 17 demands?

5. If ASCAP and BMI were to offer licenses that do not entitle users to play partially owned works, how (if at all) would the public interest be served by modifying the Consent Decrees to permit ASCAP and BMI to accept partial grants of rights from music publishers under which the PROs can license a publisher's rights to some users but not to others?

   It would serve the public interest and the copyright creators' interests. As Register Pallante correctly said, "Copyright is for the author first and the nation second."

6. What, if any, rationale is there for ASCAP and BMI to engage in joint price setting if their licenses do not provide immediate access to all of the works in their repertories?

> None, but the DOJ sanctions their price fixing at $.00000012 per stream as supposedly legal and nobody really cares anymore. This move by the DOJ will force BMI and ASCAP writers and publishers to leave in droves, just as I have the past 2 years and "consent decree free". That means not even joining SESAC or Global Rights but remaining a free agent, free from the chains of the DOJ down at $.00 per song.

17 U.S.C. §106 EXCLUSIVE RIGHTS

Section 106[10] says:

> Subject to sections 107 through 122, *the owner of copyright under this title has the exclusive rights to do and to authorize any of the following*:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

EXCLUSIVE RIGHT OR LIMITED "RIGHT" RIDDLED WITH EXCEPTIONS?

The Department's lobbying for 100% licensing violates the plain meaning of *exclusive right* embodied in Title 17 U.S.C. § 106 (1 to 6) of the Copyright Act, which originally flows from the *exclusive right* written in Article 1, Section 8, Clause 8 of the United States Constitution of 1787. Both laws federalize the long held *natural exclusive right*, *exclusive monopoly*, and *exclusive property right* bundled in music copyright law and copyright law in general. In addition to 17 U.S.C. § 106 of the Act *and* Article 1, Section 8, Clause 8 of the Constitution, this *exclusive right* in §106 is also federalized in the Sound Recording Act of 1971. Furthermore, all

[10] https://www.law.cornell.edu/uscode/text/17/106

of these federalizations of copyright are bundled with the 5th Amendment *right to private property* in the Bill of Rights.

17 U.S.C. § 106 and the copyright clause were written to *protect these exclusive rights*.

All American music creators' livelihoods and their families depend on these protections.

Therefore, in this consent decree review, can music *copyright creators depend on the DOJ to uphold the plain meaning of the words and text in a.) the copyright clause*, primarily the plain definitions of *monopoly* and *exclusive right,* and *specifically b.) the additional federal protections* of the *exclusive right* found in 17 U.S.C. § 106 of the Act, *or* not?

In other words, can music creators depend on the *construction* of *exclusive right* in §106?

Former Register Mr. Ralph Oman said it best when he recently posed the question, what is "*...the true nature of copyright — as an exclusive private property right, or as a limited right to be doled out stingily, riddled with exceptions and limitations, to be given away free-of-charge.*"? A perfect definition of *lean back* and *lean forward* streaming in 37 C.F.R. § 385.

Copyright law was designed to protect the profit of the copyright creators, not have the chief law enforcement agency in the United States works as hard as they can to devise a system that gives our art and property away for free, which is what the consent decrees and 100% licensing do.

RESPECTING COPYRIGHT AND THEREFORE THE EXCLUSIVE RIGHT

If we look to the Copyright Office's website at Circular 92[11], "Copyright Law of the United States of America and Related Laws Contained in Title 17 of the *United States Code"*[12], a

[11] http://copyright.gov/title17/92preface.html December 2011

[12] http://copyright.gov/title17/circ92.pdf December 2011

summary of current copyright law, it begins by quoting the exclusive right found in the copyright clause in Article 1, Section 8, Clause 8.

What is most striking is the title, "The Constitutional Provision *Respecting Copyright*".

This is what copyright is all about and what this consent decree should be all about, *respecting copyright*. Simply, is the Department going to respect the exclusive right found in §106 (and Article 1) or *not*?

We music creators simply ask The DOJ to please respect the hard work and nightmare it is to create all these copyrights at our expense, the time and labor, with no guarantee of return or success, in fact right now, it's a 99% losing proposition. American copyright creators, Congress, the DOJ and the Copyright Office are literally at the crossroads of a *constitutional copyright crisis* that has a simple *yes* or *no* answer. *Will exclusive rights be enforced or not?*

B*ecause if certain portions of the Copyright Acts complained of are unconstitutional, the passage of time will not make them constitutional. Likewise, if an Act is unconstitutional, there really can be no time limit for objection*."

CONSTITUTIONAL PRECEDENT

GEO cites precedent concerning the lawful superior nature of copyright's exclusive right *over* licensees wants and needs. These pro-copyright precedents from the Supreme Court and lower courts, that are all in favor of copyright over licensees or the public good, include *Mazer v. Stein*, 437 U.S. 201, 219 (1954), *Harper & Row, Publishers, Inc. v. Nation Enter.*, 471 U.S. 539, 546 (1985), *Eldred v. Ashcroft*, 537 U.S. 186, 212 (2003), *Golan v. Holder*, 132 S. Ct. 873, 888 (2012), *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975), *Klitzner Indus. v. HK*

James & Co., 535 F. Supp. 1249, 1259-60 (E.D. Pa. 1982), *Salinger v. Colting*, 607 F.3d 68 (2d Cir. 2010), *Am. Geophysical Union v. Texaco Inc.*, 802 F. Supp. 9 (S.D.N.Y. 1992), and of course *Herbert v. Shanley*, Decision 242 U.S. 591 (1917).

THE PUBLIC'S "RIGHT" VS. THE CREATOR'S RIGHTS

Having researched certain aspects of the legislative history of copyright law, the *one* thing I realized the Act(s) *all had in common the past 100 years* was this obsession with *protecting the public good first and foremost,* to make it *fair,* instead of protecting the *exclusive rights of all the copyright creators*.

As James Madison said about the public good vs copyright that copyright wins, "The public good fully coincides… with the claims of individuals."

A perfect example of broadcaster's willful ignorance of copyright law and personal 5th amendment intellectual property rights, look no further than NAB Joint Board Chairman Mr. Charles Warfield who testified to Congress that "the *core objective* of copyright law is the public good, not the creator's interest. Not the user's interest. But the interest of the public at large." Nothing could be further from the truth — the public good is not the intent of the exclusive right found in copyright law . In fact, Mr. Warfield's willful ignorance of copyright law is disturbing and NAB's position is the opposite of exclusive rights.

> "The Supreme Court has repeatedly held that the core objective of copyright law is the public good. Not the creator's interest. Not the user's interest. But the interest of the public at large. Unfortunately, in testimony before this Committee, *some are arguing for fixes to copyright law that serve a very different goal – ensuring that their individual constituencies receive greater compensation at the expense of both music licensees and listeners.* Nowhere in their arguments do they emphasize the

> need for balance, the interest of consumers, or enhancements to competition – any one of which would promote the public good."[13]

Using Mr. Warfield's own words, it's clear that "*nowhere* in their (NAB) arguments do they emphasize the need for *balance*" *with copyright creators*. So, this willful ignorance is why our natural rights are now perpetually being stolen, reduced, judged, limited, lawyered, "riddled with exceptions", to where our hard earned art is given away by Washington D.C. lobbyists against our will and free of charge. It's clear from NAB's testimony and reading the 1909 Act, the DMCA/United Nations WIPO Treaty, and other additions to the Act that the *public*, *public good*, the *protection of the public* and *licensors* and *users* so called "rights", has seemingly always been the goal of past Congresses, lobbyists, the NAB, and other anti-copyright interests. That is why I call this whole process "Atlas Shrugged for Songs", not just this rate proceeding, but the entire D.C. lobbying apparatus that has built itself around copyright to control copyright, remove the monopoly, destroy the exclusive right, destroy the property right and right to exclude, then steal all profits by dismantling the full bundle of rights historically found in copyright law.

The smartest thing the DOJ could do is completely drop the consent decrees on ASCAP and BMI which would free up millions of American songwriters and music publishers from the control of the PRO's. Remove all restrictions on the member songwriters and publishers, allow partial withdrawals and forget this unlawful 100% licensing scheme to benefit the licensees only.

As singer/songwriter Prince was quoted in a story published recently in response to his

[13] https://www.nab.org/documents/newsroom/pressRelease.asp?id=3443 June 25, 2014 Testimony of Charles Warfield, NAB's joint board chairman, at Hearing on Music Licensing to the House Subcommittee on Courts, Intellectual Property and the Internet.

2010 quote that the "*internet is over*", meaning *the money is over for creators*, Prince said, "*Tell me a musician who's got rich off digital sales. Apple's doing pretty good though, right?*"[14]

ADDITIONAL REASONS

I was also struck by former Register Peter's quote from the 1995 rate proceeding where she said the Services stopped "*prematurely"* and "*without once considering the value of the individual performance"*[15] *therefore never considered* the copyright owners, *therefore never considered their exclusive rights* which were *completely disregarded*.

No wonder the rate is $.00 cents per stream.

So, it is in this former "digital" rate hearings where the modern *complete disregard* for the copyright law and exclusive rights in §106 first began that has led us to where we are now in 2015 - *zero value for all music copyrights 20 years later*. Register Peters said:

> "2. **Value of an individual performance of a sound recording**. T*he Register notes that the Panel stopped prematurely in its consideration of the value of the public performance of a sound recording.* Its entire inquiry focused on the value of the "blanket license" for the right to perform the sound recording, *without once considering the value of the individual performance—a value which must be established* in order for the collecting entity to perform its function not only to collect, but also to distribute royalties. Consequently, the Register has made a determination that each performance of each sound recording is of equal value and has included a term that incorporates this determination."

The RIAA, Congress and former Judges created the current streaming mess and the DOJ lets all the streamers violate my copyright, Why?

One important point GEO has made before is that the compulsory and statutory rate the past 100 years, and the past 20, has been *the lowest possible rate which determines the rate for*

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[14] http://www.theguardian.com/music/2015/nov/12/prince-interview-paisley-park-studios-minneapolis — Nov. 2015

[15] Determination of Reasonable Rates and Terms For The Digital Performance of Sound Recordings, 63 Fed. Reg. 25394, at 25412 (May 8, 1998) Final Rule and Order (overturning certain aspects of rates and terms set by the CARP, the predecessor to the CRJs) (emphasis added) Page 18 http://www.copyright.gov/history/mls/ML-597.pdf

the rest of the so-called "free-market". For lack of a better term the federal statutory rate has been used as a *"lowball ceiling"* in all negotiations, from the 2 cents set in 1909, to 9.1 cents, to $.0005, to $.0013, to the "Pureplay" nano-rate, etc., etc.

After 100 years, it is crystal clear that forced, federal, "below market", compulsory, statutory music rates, consent decrees, and other interventions *has led* us to a billionth of one penny which has failed miserably for all American copyright creators and it's easy to see why. Going from 2 cents to .000000012 cents after 100 years **is not progress** and has been ***unsustainable*** for quite some time now.

For the reasons discussed above, GEO respectfully submits to the Department his comments on the Consent Decrees and Jointly Owned Works and respectfully asks the Chief to abolish the consent decrees. If that is now possible, we respectfully ask the Chief to keep partial works then relax the the rules on *the members* of the PRO's who are most affected and hurt by the consent decrees, not BMI and ASCAP. If I can be of further assistance, please let me know.

Thank you for your time and thoughtful consideration.

Dated: Friday, November 20, 2015

Respectfully submitted,

By: */s/ George D. Johnson*

George D. Johnson, an individual
d.b.a. Geo Music Group
23 Music Square East, Suite 204
Nashville, TN 37203
E-mail: **george@georgejohnson.com**
Telephone: (615) 242-9999

George D. Johnson (GEO), an individual and digital sound recording copyright creator d.b.a. Geo Music Group (GMG)