

November 20, 2015

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

By email: ASCAP-BMI-decree-review@usdoj.gov

**Re: SOCAN Comments on Antitrust Division Request relating to United States
(U.S.) PRO Licensing of Jointly Owned Works**

The Society of Composers, Authors and Music Publishers of Canada (SOCAN) appreciates this opportunity to submit comments to the Department of Justice (DOJ) concerning the above-noted matter.

SOCAN is Canada's music performing rights society. Pursuant to the applicable provisions of the Canadian *Copyright Act* (the "*Act*"), SOCAN carries on the business, on a not-for-profit basis, of granting licences for the public performance and communication to the public by telecommunication of musical works in Canada. Essentially, SOCAN owns and/or administers in Canada the performing rights in the world repertoire of copyright protected music, including the works of U.S. authors, composers and publishers.

The musical works originating from the U.S. are administered by SOCAN in the Canadian territory pursuant to reciprocal agreements with ASCAP, BMI and SESAC. Conversely, the American societies administer in the U.S. the works created and published by SOCAN's Canadian members. Using the year 2014 as an example, SOCAN remitted a total of almost \$60M to ASCAP and BMI for the performance of U.S. works in Canada, while receiving a total of almost \$20M from them for the performance of Canadian works in the United States.

But the relationship between SOCAN, ASCAP and BMI is only a small part of the worldwide system of licensing music performing rights. It is for this reason that the DOJ's review of the Consent Decrees, including the issue of fractioning, has significant implications going far beyond the borders of the United States. ASCAP and BMI are central players in the worldwide system of collective societies. The DOJ's review on these issues stands to affect us all.

In light of the above, SOCAN wishes to comment on the fractioning issues raised by the DOJ, as follows:

- A. Under the current system, Canadian authors, composers, and music publishers of jointly owned musical works that are publicly performed in the U.S., and the CMOs, such as SOCAN, that represent them, can choose the U.S. PRO through which to license and administer U.S. exploitations of their fractional interests in such works. This is an option that is important to SOCAN's members, one that they strongly wish to maintain.

- B. SOCAN obtains the right to license musical works through its direct membership agreements with Canadian songwriters, composers, and music publishers. It then grants those rights to U.S. PROs, including ASCAP and BMI, for administration in the U.S. through the reciprocal representation agreements negotiated by the parties. Therefore, when a music user in the U.S. wishes to perform Canadian songs, it can do so by obtaining a license from U.S. PROs.
- C. In Canada, if two or more authors create a new work together, authorisation is needed from all of them in order to exploit the work lawfully. SOCAN's members also have the right to authorise the CMO of their choice to manage their rights in the United States. It is thus not uncommon for a song written jointly by two writers who are members of SOCAN to be represented by both ASCAP and BMI in the U.S., with ASCAP licensing on behalf of one of the writers and BMI acting on behalf of the other. The same would apply if a SOCAN member co-wrote a song with a member of another foreign society, such as PRS, if the writer with SOCAN chose ASCAP while the writer with PRS chose BMI. SOCAN would be granting only the Canadian songwriter's fractional interest to ASCAP and PRS would only be granting the English songwriter's fractional interest to BMI.
- D. It follows that requiring ASCAP or BMI to license the entirety of a SOCAN musical work where they have only been granted a fractional interest in the work under a reciprocal representation agreement may exceed the scope of the rights granted to SOCAN by its members and could deprive them of their choice for representation in the U.S. where their co-owner chooses another U.S. PRO to represent their interest. This would be of significant concern to SOCAN and, we expect, other foreign societies and their members as well.

We hope our comments will be useful, and thank the Department of Justice for taking them into consideration. We would welcome the opportunity to elaborate on the contents of this submission as may be required by the Department.

Yours truly,

A handwritten signature in black ink, appearing to read 'Gilles Daigle', with a stylized flourish at the end.

Gilles Daigle

GMD / jb