November 20, 2015

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

Letter Regarding the Second Request for Public Comments on U.S. Department of Justice Consent Decree Review

To Whom It May Concern;

Together, we comprise some of the most prolific songwriters in the country, across almost every genre of music. Our songs have topped the Pop, Country, Christian, and R&B/Hip-Hip charts, with over 100 Billboard number one hits. We've won eight Grammys, been nominated for two Golden Globes and two Academy Awards, and have a combined 15 Country Music Award wins and nominations.

Through the past decade, we have all earned our living as songwriters and witnessed dramatic changes in the music industry. Often we have written together or with other songwriters – most of us affiliated with different music publishers and PROs. Our collaborations have produced some of our most meaningful and popular work – and those working relationships are foundational to how the songwriting business functions today.

Recently, we became aware that the Department of Justice (DOJ) is requesting public comments related to the ASCAP and BMI consent decrees and their licensing of jointly-owned songs. As you know, the results of this review will profoundly affect our livelihoods.

We applaud the Department of Justice's efforts to review and update the ASCAP and BMI consent decrees, which is much needed. But we are very concerned about the possibility that the Justice Department is considering dramatically changing the way music licensing works by requiring ASCAP and BMI to license every song in their respective repertoires on a 100% basis, regardless of the percentage of the song their affiliated writers or publishers own or control. This would have a significant, negative impact on songwriters like us, who have done the majority of our work in collaboration with other songwriters. This move would fundamentally change how we create music, how our songs are licensed, how our royalties get paid and even whether we get paid appropriately. With everything we are up against in terms of

the decline in music sales and emerging streaming landscape, this would be a giant leap backwards when it comes to songwriting royalties.

As songwriters, our choice of which PRO to join is an individual decision based on business and creative considerations. But, although we may be affiliated with different PROs none of us have never understood our individual PROs to be licensing 100% of our songs co-written with someone else simply on the basis of our partial ownership of that song. Naturally, our PROs have always accounted to us only for our ownership interest in the songs we have co-written – this is a major reason PROs foster collaboration between songwriters.

Like other songwriters, we rely on the fact that we know from whom, when, and under what payment rules we will receive performance royalty checks. And, we know that we will actually get paid what we are owed for our interst in a song. We don't believe there is any good reason to change this long-standing system, and we want to make sure the Justice Department appreciates that requiring ASCAP and BMI to license only on a 100% basis would negatively affect us as songwriters in a number of ways.

First, requiring ASCAP and BMI to license on a 100% basis would undermine our ability to freely collaborate with partners of our choice. Collaboration with other songwriters is vitally important to the creation of a successful song and is an integral part of the creative process.

Most of the major hits you hear today were written through a collaborative process. These collaborations are by nature highly personal, depending on the creative chemistry between songwriters. We do not choose collaborators based on what publisher or PRO they use and do not want to be forced to do so in order to maintain control over our creative work.

When we co-write a song, our co-writers understand that we live in a world that deals in partial ownership interests and that we share ownership of the works we write together. We often enter into agreements that lay out the ownership splits of the song and the rights that each co-writer has to exploit the song. Many of our agreements limit the ability of each co-writer to license more than his or her share of the copyrighted song or require approval from each co-writer prior to licensing the entire work. Requiring ASCAP or BMI to license 100% of a song, even if it represents less than 100% of the song's writers, would undermine such an agreement. And, even more importantly, it would make it impossible for us to license any song subject to this type of songwriter agreement through our chosen PRO.

Requiring 100% licensing would thus put us in the untenable positon of having to choose between good creative collaborations with songwriters from different PROs and the certainty and reliability of royalty payments from our chosen PRO. This is true even where we may not have entered into an express written agreement with co-writers on a song, but we have all relied on

our respective PROs licensing and paying us based on our interests in a song – which has been the industry norm for decades.

Second, adopting a 100% licensing policy would affect our relationships with our PROs and undermine the reasons for and benefits of our affiliations. Relationships with PROs are important and personal. We affiliate with different PROs because we believe they will best represent our interests and the benefits of affiliating with ASCAP, BMI, SESAC or GMR are very different, as each PRO has different royalty payment schedules, royalty distribution formulas, and other affiliation terms, and the actual royalty payments for different categories of uses can be significant. If another PRO is licensing 100% of our songs and then accounting to us, we lose the benefits we have negotiated with and relied on from our own PRO.

We are also extremely concerned that 100% licensing would significantly impact royalty payments and revenue, depending on the differences in how the different PROs calculate royalties for certain uses, how they calculate songwriter distributions, and the potentially different royalty rates agreed to by each PRO. There will have been no point to choosing carefully to affiliate with a certain PRO if our co-written songs are held hostage to another PROs terms.

Further, the lack of any existing structure for the PROs to access information necessary to pay songwriters and provide proper accountings and royalty statements means that songwriters could experience significant delays in payment or never receive the full royalty payments to which they are entitled for the use of their songs. This possibility is a significant threat to those of us who count on regular royalty payments to support ourselves.

Our ability to collaborate with songwriters from different PROs while knowing that royalties from the performance of our finished song will flow through our individual chosen PRO has never been threatened. However, if the Department decides to require the PROs to adopt a 100% licensing policy, we may be penalized for working with writers from a different PRO. Ultimately, the Department's proposal could create a dramatic chilling effect on the craft of songwriting by turning on its head how we create music, how our music is licensed, and how and when (and perhaps whether) we receive royalty payments.

Our hope is that the DOJ's review of the consent decrees might return some much needed control to us as creators, who have all worked under an extensive regulatory regime that makes many decisions about our songs' value for us. To think that the review could result in the opposite – that we might lose even more control of the music we create – is deeply concerning.

We urge you to consider the impact that 100% licensing would have on songwriters like us. Thank you for your time.

Sincerely,

The National Music Publishers' Association Songwriter Advisory Council (NMPA-SAC)

Rhett Akins	*Tom Douglas*	*Joel Madden*
Evan Bogart	*DJ Frank E*	*Heather Morgan*
Busbee	*Toby Gad*	*Liz Rose*
Blair Daly	*Nicolle Galyon*	*Rivers Rutherfod*
Barry Dean	*Ashley Gorley*	*Troy Verges*
Chris De Stefano	*Josh Kear*	
Andrew Dorff	*Benji Madden*	