The Production Music Association (PMA) is a non-profit trade organization representing the interests of over 650 production music libraries.[1] Production music libraries source volumes of music of all genres from composers and artists and license that music on a "blanket" or "per use" basis to the array of music users who need music for their television programs, movie trailers, network promotions, corporate videos, and so much more. It's important to know that much of the music heard on television is supplied by PMA member-libraries. These libraries own the recording rights and publishing rights to the music they represent. This allows for "one-stop" shopping by the user to obtain licenses for all rights (Synch and Master – collectively hereafter referred to as "Synch") needed for a recorded track, except for the public performance right ("Performance"), which is licensed predominantly through ASCAP or BMI. Most of the songwriters, composers and artists that supply music to PMA member libraries are members or affiliates of one of these two performing rights organizations (PRO). As publishers, it is common practice for our members to register their music with their composers' PROs.

Following are our comments to the Office's study of music licensing.

4. For uses under the Section 115 statutory license that also require a public performance license, could the licensing process be facilitated by enabling the licensing of performance rights along with reproduction and distribution rights in a unified manner? How might such a unified process be effectuated?

The PMA supports bundled licensing of all rights. Practically speaking, ASCAP and BMI should be allowed to represent all composition rights in a piece of music. As rights have converged in the digital domain, more and more music users need to be able to seek licenses that include bundled rights. As an example, the lines between the Performance, Mechanical, and Synch rights in content on interactive streaming services are very blurry. It just makes sense then for a user to be able to seek licenses for multiple right types when seeking the Performance license from ASCAP or BMI. The current Consent Decrees' denial of allowing ASCAP and BMI this flexibility is a missed opportunity to foster a more streamlined licensing system that users and rights owners have been demanding for several years now. Traditionally, music publishers have been able to license multiple rights when doing direct deals with users. Moreover, it is practically industry norm in every copyright respecting territory for the local performing rights society to also administer Mechanical and Synch licenses. PMA members want their

[1] www.pmamusic.com

PROs to be able to license other rights in their music, and have the freedom of choice to decide if and when it makes sense for them to do so.

5. Please assess the effectiveness of the current process for licensing the public performances of musical works.

The current process for licensing public performance rights overall is effective and efficient for both copyright owners and users. Each are able to license multiple works across multiple, various use cases in a relatively quick and straightforward manner. The PMA therefore supports the collective licensing model employed by ASCAP, BMI and SESAC with one major exception.

Performances of music licensed in television and other audio-visual programming are reported via music cue sheets. A cue sheet is designed to detail all music used in a program or program episode, including licensed and commissioned music. The cue sheet reporting system in the United States is broken in several facets.

1) Enforcement of Reporting Is Weak

The PROs and music licensors generally require cue sheets to be reported when their music used. However, the fulfillment of these requirements is often left to the good graces of the licensee or their content producers. As such, cue sheets are often unreported or lagging behind reporting deadlines. PROs and their constituents try to be proactive, but this usually results in a game of chase and chance. As a result, payments to licensees are often delayed, which creates an undue accounting burden on them in trying to reconcile payments for their performances. This creates uncertainty in rights owner revenues, cash flows and bottom lines.

2) Little Access of Cue Sheet Data for Writers and Publishers

Cue sheets, when reported, often bypass the original licensor and go straight to the PROs. PROs process these cue sheets, most often, without any awareness of the rights owner. On the one hand, one might argue that this is what the PRO is supposed to do and their constituents should fully trust them to accurately process the cue sheets. The reality, however, is that rights owners end up having to decipher their royalty statements to ensure all of their activity, as reported on cue sheets, has been accounted for. This creates an environment where constant royalty adjustment claims must be made in order to achieve full, comprehensive payment.

3) No Standards

Cue sheets are prepared and filed in multiple, disparate formats. Companies like Soundmouse have emerged offering solutions for streamlining the process. However, more often than not, their solutions become just another format to deal with. These disparate formats make the processing of cue sheets time and labor-intensive, and error-prone.

4) Manual Entry Results In Errors and Delays In Payments

Because of the disparate formatting, cue sheet data is often re-entered into licensor or PRO systems manually. Moreover, matching of cue sheets to prior title registration data has to be done manually, or requires manual oversight. As a result, the PROs often roll up multiple uses of a single rights owners' works (even with different titles) into a generic work title pre-fixed with the show name followed by the word "Cues", e.g., "Grey's Anatomy Cues". This is all done to shortcut the work of processing multiple works in a show. All of the above encourages errors in royalty accountings and results in the inability of rights owners (i.e., original licensors) to easily, efficiently and confidently confirm performance royalty payments for all of their licensed uses.

The cue sheet reporting protocols in the U.S. are particularly problematic for music library owners who often license their music on a blanket basis. Once a blanket license is issued, the licensee can use any piece of music from that library at their convenience during the term of such license. Again, while most libraries, "require" their licensees to provide cue sheets, it is very difficult to police compliance.

Since royalties from public performances in audio-visual programming are so much of the life-blood of music library owners, it is imperative that they have access to cue sheets in order to know how their music is being used and to ensure their PROs have fully accounted for their performances. There needs to be a major overhaul of the current system.

1) PROs should be required to pool their cue sheet data into one, master repository and provide any interested party access to this data. At the very least, all three PROs should be required to allow their members/affiliates access to their own cue sheet databases, along with export functionality so that rights owners can keep an electronic, dynamic record of cue sheets containing their music.
2) There needs to be a standard cue sheet reporting utility that provides efficient filing and electronic reporting of all cue sheet data. It is asinine that composer and publisher income assurance and sustainability in the year 2014 is left to a disparate, non-standardized system, and highly inefficient and error-fraught system.

6. Please assess the effectiveness of the royalty ratesetting process and standards applicable under the consent decrees governing ASCAP and BMI, as well as the impact, if any, of 17 U.S.C. 114(i), which provides that ''[l]icense fees payable for the public performance of sound recordings under Section 106(6) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners of musical works for the public performance of their works.''

7. Are the consent decrees serving their intended purpose? Are the concerns that motivated the entry of these decrees still present given modern market conditions and legal developments? Are there alternatives that might be adopted?

For years, Performance royalties have been relied on in the production music industry as sacred when it comes to dependable, sustainable revenues. Unfortunately, ASCAP and BMI have both been "hamstrung" in procuring competitive rates in today's market by outdated and outmoded Consent Decrees. Particularly we believe the rate courts and their processes deter, not aid, in achieving fair and proper rates in today's dynamic music marketplace. PMA members have experienced first-hand the pain caused by multi-billion dollar media companies that manipulate the compulsory licensing system established by the Consent Decrees in order to eschew fair and proper license fees. The process of "ask for a license and you're licensed, then settle it out in rate court if you can't agree on fees" encourages strategic avoidance of proper rate setting and payment. It's maddening to try and understand how major corporations are allowed to intentionally delay fair payment, or even payment at all, to the small businessmen and women ASCAP, BMI and the PMA represent. Even when an agreement or decision IS finally reached, ASCAP and BMI are tasked with the burden of making adjustments and/or retroactive distributions in order to correct royalties already paid or catch up on royalties due. These adjustments and/or retroactive distributions are costly to administer for both the PRO and its constituents. Moreover, the delays, adjustments, and "make-up" payments thrust uncertainty and volatility into songwriter, composer, and publisher cash flows, budgets, and bottom lines.

To emphasize the insanity of this process, let's imagine that if every supplier of parts to the major car manufacturers were required to allow those manufacturers to use their parts for free while those manufacturers took their sweet time in deciding if they wanted to a) negotiate or b) sue to obtain the lowest possible rates for those parts. Imagine further the volatility of those suppliers' revenues and even further how frustrating and confusing it would be for those suppliers' vendors to be able to rely upon prompt and consistent payment, and comprehendible invoices. Imagine how costly, inefficient, and chaotic all of the debits, credits and adjustments would be to supplier-side revenues. Imagine a world where all business was conducted this way. Yet this is exactly the world songwriters, composers and publishers have lived in for decades! Why, we ask, have PMA members and the other small businessmen and women in the songwriting and publishing community been singled out for such heavy regulation for so many years? In no other business in America are suppliers forced to provide a product or service first and then negotiate or litigate the price with the buyer later.

In 1941 when the original Consent Decree was written, radio broadcasting was still largely a "mom and pop" industry and television broadcasting was in its infancy. The function of the Consent Decrees made much more sense when broadcasters weren't multi-billion dollar conglomerates with vast coffers and virtually unlimited lobbying and legal resources. Today, however, broadcast, cable and digital users of music in the U.S. collectively generate more than $130 billion[2] in advertising revenue per year. The playing field has clearly shifted. Why then should these mega users be allowed to drag their suppliers through a lengthy and expensive compulsory licensing process? Big media has nothing to lose and everything to gain by doing so. However, even when we "win", we lose due to the reasons explained heretofore. ASCAP and BMI need to be able

[2] Source: Internet Advertising Bureau/Price WaterhouseCoopers LLP report, *Internet Advertising Revenue Report: 2013 Full Year Results*, April 2014, page 19

to negotiate for fair license fees without the deliberate sidestepping of licensees who are encouraged to do so by a broken rate court process.

In addition, we believe the rate courts have deterred proper rate setting through the continued, misguided use of rates established through the compulsory licensing process as benchmarks, instead of benchmarks based on free market negotiations. In today's market, music licenses negotiated directly between willing buyers and sellers exist that do reflect appropriate, real market value. Many PMA members have negotiated direct Performance licenses while negotiating Synch and Master licenses with their customers. Other music publishers and record labels have regularly negotiated direct deals with a wide variety of users, particularly more recently with digital media companies and non-traditional music users. SESAC operates outside of the confines of compulsory licensing and negotiates deals daily with the same entities that need ASCAP and BMI licenses. Now we have Global Music Rights doing the same thing.[3] This is all indicative of a highly dynamic and competitive marketplace whose rate setting precedents should be the benchmarks, not rates resulting from the compulsory process itself.

Platform Parity

12. What is the impact of the varying ratesetting standards applicable to the Section 112, 114, and 115 statutory licenses, including across different music delivery platforms. Do these differences make sense?

The lack of parity in rate setting standards is troubling to say the least. PMA Members, other music rights owners and their representatives should be allowed to set rates on real world benchmarks without government regulation or intervention. There is no logical justification for sound recording owners to be able to negotiate freely for certain rights, while composition owners must navigate an outmoded obstacle course for similar rights. It's particularly perplexing for PMA members, being both sound recording and composition copyright owners as they are, to see how the sound recording copyright can be valued so disproportionately higher than the composition copyright by services such as Pandora. It is industry norm for a user to pay equal amounts for the rights to synchronize both the sound recording and underlying composition of a track in a film or TV show, for example. It's therefore mind-boggling that rate parity can't be realized or even considered on the Performance side. The law needs to be changed now so that interested parties can negotiate freely and fairly for proper rates based on all analogues, including rates for sound recordings.

14. How prevalent is direct licensing by musical work owners in lieu of licensing through a common agent or PRO? How does direct licensing impact the music marketplace, including the major record labels and music publishers, smaller entities, individual creators, and licensees?

[3] Global Music Rights was founded in 2013 by Irving Azoff and represents music rights holders for the licensing of their public performances. Former Performing Rights Organization (PRO) executives Randy run operations. The company offers licensing, distribution and collection services for the exclusive rights granted to music creators and owners by copyright law.

Direct licensing is perhaps more prevalent in the production music industry than other areas of music publishing. We support the ability of our constituents to offer direct licenses when they see fit. However, this should not be forced on PMA Members and other rights owners by disallowing the partial grant of rights to their PROs (as suggested by the recent rate court decisions regarding Pandora). Direct licensing can be beneficial and necessary in certain cases, but rights owners should have the alternate choice of licensing some or all rights through the collective licensing abilities traditionally afforded to them by their non-exclusive agreements with their PROs.

Regarding marketplace impact of direct licensing, some real-world context is readily available. The majority of PMA members are small businesses that source their music from the tens of thousands of even smaller businessmen and women (i.e., individual songwriters, composers, and artists). Even the so-called "majors" of our industry are "small" businesses relative to the enormous, publicly traded companies that overwhelmingly comprise the buyer side of our market. Our members are no strangers when it comes to negotiating licenses with the likes of Viacom, Sony, and Comcast – major companies with virtually unmatched negotiating leverage. This lopsided bargaining power has helped drive down the value of Synch licenses. Inexperienced and uninformed music suppliers, usually represented by young songwriters and artists, are easily preyed upon by these "Goliaths". More and more these burgeoning creators are pressed into low-value deals on the basis of "promotional value" or "right of access". They're even required to give "kickbacks" in the form of a piece of the Performance income stream by some major networks in order to secure the job. Moreover, many of these large buyers use the reach of their distribution channels to persuade suppliers that they will make it up on the "back end", i.e. in Performance royalties. These realities have resulted in enormous downward pressure on the entire Synch revenue stream for everyone on the music licensing supply side, including PMA members.

With the erosion of Synch license values, the safety, efficiency, and effectiveness of the collective licensing abilities of ASCAP and BMI to ensure competitive rates and royalties for our public performances are more important now than ever. Yet the inviolability of this revenue stream is being threatened by similarly uninformed and/or misguided influences. More and more, music owners are being confronted with demands for direct licenses to their public performance rights. More recently, new companies have emerged with "Performance-free" licensing models, i.e., they prohibit their composers from being members or affiliates of standing performing rights organizations like ASCAP or BMI. This allows them to deal directly with their customers for the Synch, Master *and* Performance rights – not a bad idea in theory. There is a time and place for direct deals, and publishers need the flexibility to license certain or all-rights when those opportunities are economically feasible for them and their clients. The sad reality is that many young composers and newer libraries don't know how to properly value a Performance license, and their artists and composers don't know the prospective value of what they are giving up.

Prior to my Executive Director position with the PMA, I spent 20 years at SESAC, the third, smaller PRO competitor to ASCAP and BMI. I ended my tenure there as Senior Vice President, Strategic Development / Distribution & Research Operations. In this and

other previous roles, I was deeply involved in the process of helping SESAC value its Performance licenses with all licensees, but particularly broadcast and cable companies (insofar as this was a primary focus of SESAC's growth potential as an organization). I am thus able to attest to the intricate, complex nature of properly valuing a Performance license. We routinely analyzed things like market bearance, i.e., ASCAP and BMI rates for applicable licenses (where such information was available), music usage, Nielsen ratings (viewership levels) of programs, airings schedules, CPM[4] values, and much, much more. This level of research required extreme skill in data analytics, deep comprehension in marketplace economics, and vast financial resources for procuring, processing, and managing the relevant data[5]. All of these things were necessary for having a respectable negotiating position with our customers, i.e., giant broadcast and cable outfits with virtually bottomless legal war chests.

There's little doubt that inexperienced players have not considered the complexities involved in the valuation of Performance rights, much less that they have the resources to obtain the requisite intelligence to do so. Considering this, how then can they be expected to obtain a fair market price. This is why we as rights owners need experts to help us establish proper value and provide the negotiating strength to match our over-lawyered buyers. Imagine how onerous and expensive it would be for every songwriter, artist and musician to have to do this kind of homework and then go and negotiate with numerous large corporations many of whom use the same global law firm[6]. They would cease to create and there would be no more music. This is why the collective bargaining expertise and strength of ASCAP and BMI is so critical to a thriving and healthy music licensing marketplace.

We thank you for undertaking this study and look forward to meaningful, necessary reform.

Hunter Williams
Executive Director
Of and o/b/o The PMA

[4] CPM means "Cost Per Thousand" and is the standard unit of measurement used by advertisers to set advertising rates.

[5] Data for music usage, CPMs, ratings, and program schedules cost SESAC high six to low seven figures a year in licensing and administration costs.

[6] Weil, Gotschal & Manges has 1,200 lawyers in 20 offices around the world. It represents the music licensing and copyright interests of the local broadcast industry (approximately 1,200 local TV stations), Pandora Media, Sirius XM Radio, ABC, NBC, CBS, DMX, and many more major broadcast, cable and new media clients.