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Subject: ASCAP CONSENT DECREE COMMENTS

July 8 2019

COMMENTS REGARDING THE ASCAP CONSENT DECREE FROM COMPOSER STEVE KARMEN AND PUBLISHER ELSMERE MUSIC, INC.

Since its inception, the ASCAP consent decree has been an effective tool for ASCAP management to manipulate an unsuspecting Department of Justice. Even ASCAP president Paul Williams' June 2019 membership letter purposely makes only passing notice that the DOJ has opened a review of the consent decree. Under the claim of wanting to reduce government involvement, all the major music publishers have posted comments to distract and keep buried the basic requirement that royalty distributions to members must be made ***"...primarily on the basis of objective surveys of performances periodically made by or for ASCAP..."*** (Consent Decree language)

No one wants to focus on this issue because *objective* surveys have *never* been made. The proof is indisputable: when ASCAP was founded a century ago, popular song composers and their publishers divided *all the income*, which then came from *live* performances of their music in theaters and saloons. After *radio* was invented, and theme, background, and advertising music became part of broadcast life (and then, after the first consent decree began, requiring performance surveys), the popular song rate still commanded the top 100%. Later, after the invention of *television*, and still later, after the invention of the *Internet*—all using *different* types of music—the popular song rate continues at 100%. No one can claim that

an *objective* survey has ever been made when the top rate *category* has been locked at 100% for more than *one hundred years*.

Taking advantage of the government's naiveté about the music business, deep within the decree ASCAP was permitted to concoct a "*category-credit*" system to determine royalty payments to members. Under this musical-*Apartheid* approach, "a featured performance"—another word for pop song—would earn 100% of a payment credit, the highest payment rate, while credit percentages for all other categories of music—theme music, background music, advertising music, etc.—lagged far behind. ("*Featured performance,*" is an ASCAP manipulation of words: under the *blanket license* there is no such thing as a featured performance because *all* music is featured and paid for *equally* by the broadcasters.)

Further, the decree permits members with long running songs—primarily the publishers and estates of old-time *standards* composers—to accumulate *extra votes* in the annual Board of Director elections, thereby assuring chosen members of self-election, and their continuing, *unchallenged* control of the ASCAP Distribution Committee.

Will the DOJ finally have the courage to address this distribution-robbery issue? Or will it just be too difficult? We'll see.

Steve Karmen

Elsmere Music, Inc.