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FILED ELECTRONICALLY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: **Notice of *Ex Parte* Presentation**
Pandora Radio LLC Seeks Foreign Ownership Ruling Pursuant to
Section 310(b)(4) of the Communications Act of 1934, as Amended
MB Docket No. 14-109

Dear Ms. Dortch:

On April 7, 2015, Richard H. Reimer, Senior Vice President, Business and Legal Affairs, ASCAP; Harriet J. Melvin, Partner, Thorn Run Partners; and Darren W. Johnson, Meredith S. Senter, Jr., and F. Scott Pippin, attorneys for ASCAP, met with Commissioner Michael P. O’Rielly and Robin C. Colwell, the Commissioner’s Chief of Staff and Legal Advisor.

During the meeting, ASCAP described its role as a clearinghouse for public performance rights that are granted to songwriters, composers and music publishers by the Copyright Act, and described current broadcaster fee structures, including the Radio Group License, as negotiated between ASCAP and the Radio Music License Committee. ASCAP explained its opposition to Pandora’s application to acquire radio station KXMZ(FM), Box Elder, South Dakota, including the public interest harms that would accompany assignment of the KXMZ license to Pandora, such as the negative effects on songwriters/composers and small broadcasters.

ASCAP expressed agreement with Commissioner O’Reilly’s position, as stated in his blog post of March 3, 2015, that the Commission should generally reform its rules regarding foreign ownership of broadcast licensees. ASCAP expressed its belief that the foreign ownership issues raised by Pandora’s petition should be resolved in a

GET THE FACTS: PANDORA BUYS FM RADIO STATION IN A BID TO UNDERCUT SONGWRITERS

Pandora recently purchased radio station KXMZ-FM in Rapid City, South Dakota, in a bid to lower the licensing fees it pays songwriters and composers for public performances of their work. Pandora says this will help music creators and listeners, but the facts tell a much different story.

PANDORA MAKES A HUGE PROFIT OFF OF SONGWRITERS:

- **Pandora, a Wall Street-traded company, reported revenue of \$126 million in May 2013** for its first quarter alone.
- In contrast, ASCAP is a nonprofit membership organization that collects and distributes royalties to the **more than 460,000 independent songwriters, composers and music publishers** it represents.
- Every **1,000 plays of a song on Pandora is worth about 8 cents** in performance rights for the songwriters and composers (\$0.00008 per stream).
- To put that in context, Miranda Lambert's hit song "The House that Built Me" was streamed on Pandora nearly **22 million times**, earning its songwriters and publishers roughly \$1,788.48. Co-writer Allen Shamblin received only **\$894.14**. Lady Antebellum's 2011 Grammy-winning Song of the Year "Need You Now" was streamed nearly **72 million times on Pandora**, earning its four songwriters and publishers \$5,918.28. Co-writer Josh Kear received only **\$1,479.57**.
- In 2012, Pandora founder Tim Westergren cashed out **\$9.9 million in stock options** – more than the \$7.6 million the company paid in total licensing fees split among all ASCAP members that same year.

PANDORA USES MORE MUSIC THAN TRADITIONAL RADIO:

- Internet radio and terrestrial radio use music and generate revenue in very different ways.
- **Over 70 million people** listen to Pandora's Internet radio service every month. In contrast, KXMZ has an average listenership of 18,000.
- The Radio Music Licensing Committee (RMLC) license was designed for businesses that earn more than **95% of revenue from terrestrial radio**. That's a far cry from Pandora's business model, which is wall-to-wall, user-influenced online music.
- By 10am every morning, Pandora has already performed **200 million songs**, as compared to the **hundreds** of songs played by the average radio station in an entire day.
- Even with the purchase of KXMZ, **Pandora will earn virtually all its revenue from the Internet**, so the Internet licensing rate should apply.

WHAT PEOPLE ARE SAYING:

It's telling that the deal was announced in an editorial written by Christopher Harrison, Pandora's assistant general counsel, in the Hill, a Washington newspaper covering legislative minutiae. Pandora's future relies more on laws and courts than on its ability to successfully run KXMZ, Hits 102.7.

BUSINESSWEEK: [Pandora Buys a Radio Station, Just to Make a Point About Royalties](#), June 12, 2013

Just in case you didn't quite get it before, Pandora has now demonstrated unequivocally that they loathe songwriters so much that they'd literally do anything to screw them. Including antics like buying an FM radio station.

MUSIC TECH POLICY BY CHRIS CASTLE:

[Tim Westergren's Mask Is Slipping: Pandora's Scorched Earth Attack on Songwriters](#), June 11, 2013

There may be plenty of music-lovers in the nation's 46th largest state, but Pandora's purchase of a South Dakota top 40 music station last week certainly wasn't about them.

UPSTART BUSINESS JOURNAL: [Pandora's bold plunge into mainstream radio, and a lesson for startups](#), June 12, 2013

The company is also trying to convince everyone that this about "the community" and not just pleasing their money-hungry investors... Despite its stated intentions to make its service better and please "the community," it also seems like Pandora bought a radio station in South Dakota as a big publicity stunt in an attempt to highlight its plight with the record industry which is still stubbornly trying to make money for its artists.

GIZMODO: [Why Pandora Just Bought an FM Radio Station in South Dakota](#), June 12, 2013

Its first foray into traditional radio broadcasting, the move has little to do with strategic shift and everything to do with royalty costs... Pandora's costs savings will be small. The preferential royalty rates are expected to snag savings worth less than 1 percent of its revenue versus the rates it is currently paying.

CNET: [Pandora to buy radio station to piggyback onto cheaper costs](#), June 11, 2013

Members like me depend on ASCAP to negotiate fair deals on our behalf, so we can earn a living as more listeners discover and enjoy our music across a wide variety of platforms, including Internet radio... I like streaming music online as much as the next guy. And I certainly appreciate the opportunities it creates for me as an artist to reach new listeners. But Pandora is misleading readers by claiming to be on the side of artists, when its recent actions firmly prove otherwise. Shame on us if we let them continue the charade.

THE HILL: [Pandora is stiffing artists by songwriter Josh Kear](#), June 13, 2013

"This is yet another sad step in Pandora's war against songwriters," National Music Publishers Association president David Israelite told Digital Music News.

"While other digital music partners choose to enter into voluntary licensing deals, Pandora chooses to try to enrich itself through a strategy of suing creators and gimmicks. The only positive development from this is that Pandora has removed any shred of credibility it had with creators and now can be seen for what it is — a company with no interest in treating songwriters fairly."

DIGITAL MUSIC NEWS: [Songwriters Respond: "This Is Another Sad Step in Pandora's War Against Us..."](#), June 12, 2013

In the digital age, hard work still deserves fair pay. As new technologies create new opportunities for musicians to reach new audiences, ASCAP is committed to making sure the hundreds of thousands of small and independent songwriters, composers and music publishers we represent are fairly compensated for public performances of their work.



ASCAP
WE CREATE MUSIC

ALL ABOUT ASCAP

Who we are

- **The American Society of Composers, Authors and Publishers (ASCAP) is a membership organization that operates on a not-for-profit basis of more than 525,000 songwriters, composers and music publishers of every kind of music from all 50 states and beyond.**
- **ASCAP's mission** is to license and promote the music of our members and to make it possible for them to be paid fairly when their music is performed publicly, over any media platform, or live.
- **ASCAP is the voice of the music creator.** ASCAP was formed in 1914 by songwriters and composers who knew that on their own, they would have very little bargaining power with the users of music to negotiate fair payment for the use of their works. This is especially true today when you consider the power of media companies who use music versus that of individual songwriters or composers.

Who we represent

- **ASCAP members are the greatest names in American music – from John Philip Sousa to Jay Z, Katy Perry to Brad Paisley, Bruce Springsteen to Beyoncé, Duke Ellington to Hans Zimmer – as well as thousands of names you've never heard of, but whose music you love, from songs to symphonies to film scores to music in TV shows.**
- **We also represent thousands of songwriters and composers in the early stages of their careers, hardworking Americans who rely on their ASCAP royalties as a vital part of their livelihood.**

While some ASCAP members are also recording artists, we represent the work they do as songwriters and composers.

What we do

- **We help our members turn their art into a living** by licensing the public performance of their music, and distributing royalties based on those performances.
- **Performance royalties are critical to songwriters' livelihoods** and are becoming even more important as music consumption moves from copies to streaming.
- **ASCAP collects licensing fees** from hundreds of thousands of radio and TV broadcasters, music venues, websites, symphony orchestras, bars, restaurants, mobile and wireless services and many others that use ASCAP music as part of their regular business.



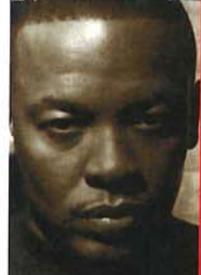
"Updating the nation's antiquated music licensing system will better serve the needs of not only music creators, like me, but businesses that use our music, consumers and the global marketplace for music."

– Aloe Blacc



"ASCAP looks out for all of us. We who write songs are ASCAP. It's just so important for us to support one another as songwriters. To protect our intellectual rights, that's all we have."

– Lyle Lovett



"Everybody who writes should be involved with ASCAP. If you're a songwriter, this is where you need to be."

– Dr. Dre



"ASCAP was there for me way before anything, when I was still a dreamer, you know? It was the first time I felt like I was a part of something."

– Marc Anthony



"If it weren't for ASCAP I wouldn't have the house I have, I wouldn't be sending my kids to college... The music business is a big roller coaster ride and the one consistency in my life has been these guys right here."

– Radney Foster



"The music industry can be very daunting, especially as a young writer... I feel like ASCAP actually cares about what happens to me and are fighting for me out there."

– Sara Bareilles



ASCAP
WE CREATE MUSIC

- **Our goal is to keep the music flowing.** An ASCAP license allows music users to publicly perform copyrighted music legally, efficiently and at a reasonable price – while compensating music creators so that they can earn a living from their work. One license provides access to the entire ASCAP repertory – more than 10 million musical works.
- **ASCAP was the first performing rights organization to issue an internet license, back in 1995.** Today ASCAP licenses tens of thousands of new and established online and wireless services, ranging from start-ups to the biggest players on the internet and mobile networks.
- **ASCAP ensures our members receive royalties from performances of their works all over the world.** ASCAP has reciprocal agreements with foreign performing rights societies in virtually every country that has laws protecting copyright.
- **We run workshops and conferences** to help our members make the most of their music careers. Our roster of grants, showcases and award programs assists promising songwriters and composers to fulfill their potential.
- **ASCAP distributed over \$883 million dollars in royalties to our members in 2014.** This included \$346.8 million for foreign performances, 1/3 of total revenue.

Why policy matters

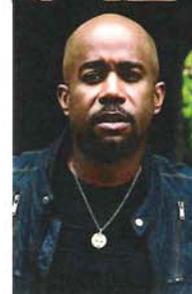
- **Songwriters and composers are unique within the music ecosystem,** with concerns and challenges completely separate from those of performers.
- **Advances in technology have dramatically changed the music landscape,** creating new opportunities but also new challenges for songwriters and other creators when it comes to music licensing.
- **The rules that govern how ASCAP does business have not kept pace with the digital revolution** – most notably, our 74-year-old consent decree has not been updated since before the launch of the iPod in 2001.
- **It's time to revisit these rules and that is why ASCAP is seeking to modernize the music licensing system** in a way that allows songwriters and composers to thrive alongside the businesses that revolve around our music.



"Joining ASCAP meant something. Today, of all the relationships I have in the music industry, it feels like the one that is non-exploitative. It's just there to be helpful and supportive."
– Annie Clark of St. Vincent



"I remember being the first of three unsigned bands in an ASCAP showcase. Two days later, Island Records signed us... It's nice to have had someone supporting and looking out for us since the beginning."
– Brandon Flowers, The Killers



"I've been with ASCAP for over 18 years, and they're the people who look out for my songwriting interest. It's great to have an organization like ASCAP fighting for you."
– Darius Rucker



"Our songwriter and composer members depend on ASCAP to earn a living and it is our job to advocate and protect their rights across all media."
– ASCAP President Paul Williams



WHY WE CREATE MUSIC

Watch

Why We Create Music

featuring 15 of today's top ASCAP songwriters and composers who provide insight into their creative process while highlighting the meaning and power of music. Visit:

bit.ly/ASCAPAdvocacy

For more information, visit ascap.org