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To Whom It May Concern:

The Screen Composers Guild of Canada (SCGC) has advised SOCAN of two important issues affecting their membership: (i) non-writers being added to SOCAN work registrations as writers of a work; and (ii) requests to screen composers for “buy-outs” of their performing rights for works.

SOCAN sets out below certain considerations for screen composers faced by these issues.

(i) Work registrations identifying non-writers as writers

Work registrations with SOCAN are for the purposes of copyright administration (i.e., the collection and distribution of royalties). SOCAN collects royalties from licensees for the performance of music in Canada. Royalties are then distributed to the appropriate shareholders according to the work registration and SOCAN’s Distribution Rules.

Identifying a non-writer as a writer of a work in a work registration may result in a breach of SOCAN’s Distribution Rules. Distribution Rule 13.03 (the “50/50 Distribution Rule”) requires that shares allocated to a writer (or writers) of a work shall not be less than the shares that are allocated to the publisher (or publishers) of that work. In other words, a minimum of 50 percent of the total share, or shares, of any registered work must be allocated to the writer(s) of that work.

SOCAN relies on its members to register their works in accordance with the 50/50 Distribution Rule. Filing inaccurate work registrations may risk a member’s good standing with SOCAN.

SOCAN has a process for correcting inaccuracies or making changes to a work registration, however these processes are predicated on all shareholders agreeing to the correction or change. Absent such consent, which may be difficult to obtain, the work registration may go into SOCAN’s dispute process and royalties will be held if a legal action is commenced.

It is possible that listing non-writers as writers on a work registration could be characterized as breaching the spirit and intent of the *Copyright Act*. The purpose of Canadian copyright law is to promote the creation and dissemination of works and obtaining a just reward for the authors and owners of those works. For copyright protection to subsist in a work, the *Copyright Act* requires that the work must be “original” and the originality of a work is a function of the “skill and judgment” exercised by its creator. Accordingly, the availability of copyright protection in Canada is inextricably linked to the intellectual efforts of its creator. Giving writing credits to non-writers may undermine Canadian copyright law by attributing the originality of a work to individuals who did not exercise skill or judgment in its creation. Listing non-writers as writers could also, possibly, dilute the moral rights of the true writer over the work.

Once an inaccurate work registration crediting a non-writer is provided to SOCAN, regardless of whether this arrangement is voluntary or imposed on the composer by contract, it can be difficult to correct or amend the registration without commencing legal action. This practice may be construed as a breach of the 50/50 Distribution Rule, or possibly a breach of the goal of the *Copyright Act*.

(ii) Buy-outs

Screen composers may be asked or required by producers to agree to “buy-outs” of their performing rights for works. A “buy-out” is generally a one-time flat fee paid to the screen composer for all the rights in a work, including the rights to future performing right royalties.

Through the SOCAN Membership Agreement, a SOCAN member assigns the performing rights in all current works and future works created by that member. The pertinent section of the SOCAN Membership Agreement is reproduced here:

ASSIGNMENT OF PERFORMING RIGHTS

MEMBER assigns to SOCIETY for the term of this agreement and in accordance with the Bylaws and the Rules and Regulations of SOCIETY as amended from time to time, all performing rights in every part, share or interest in every musical work that was created by MEMBER alone, jointly or in collaboration with others before the date of this agreement and that is now owned, in whole or in part by MEMBER and all performing rights in every part, share, or interest in every musical work that may be created by MEMBER alone, jointly or in collaboration with others in whole or in part, during the term of this agreement. It is understood that the rights assigned by this agreement are exclusive to SOCIETY for the term of this agreement.

The assignment of all performing rights in musical works created during the term of this agreement shall be deemed to be assigned to SOCIETY by this agreement for the term stated, at the same time the work is created by MEMBER.

By virtue of this section, a member cannot provide a “buy-out” of their performing rights to a producer because the performing rights were assigned to SOCAN the moment the work was created. In other words, a SOCAN member has no performing rights for a producer to purchase or “buy-out”.

We hope this letter provides additional insight into these issues.

SOCAN

Society of Composers, Authors
and Music Publishers of Canada