



União Brasileira de Compositores

Chief Litigation III Section
Antitrust Division
U.S. Department of Justice
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By email: ASCAP-BMI-decree-review@usdoj.gov

**Re : American Society of Composers, Authors and Publishers (ASCAP)
Broadcast Music Inc. (BMI)
Antitrust Consent Decree Review**

First of all we have to say that we very much appreciate the opportunity the Department of Justice is offering to other organizations to express our understanding and concerns regarding the process of review of ASCAP and BMI Consent Decrees.

UBC – União Brasileira de Compositores, is the very first Brazilian organization created for the collective management of musical works. Founded in 1942 by distinguished composers, since its first years of activity UBC has had reciprocal agreements with ASCAP and with BMI. Since then, our relations with both organizations have been strong and fruitful. This is why we could not miss the opportunity to express ourselves: what may happen in the near future with ASCAP and BMI will for sure bring high impact to all similar organizations around the world. What we have in stake in this case is the future of collective management as a very solid structure, shared by a network of societies all over the world, producing significant figures and contributing vividly to the Cultural and Creative Industries worldwide.

We do trust that the U.S. Department of Justice will take into consideration the concerns and opinions to be expressed by ASCAP and BMI themselves, but also by similar organizations part of the collective management network, as well as other branches of the musical industry in the US and outside. We hope to overcome this difficult situation that is at this moment creating uncertainty to composers, authors, music publishers and thousands of people directly and indirectly involved in the music business in the different regions of the world.

The points we would like to make here, considering the actual versions of both ASCAP and BMI Consent Decrees are as follows:

1. If ASCAP and BMI can't deny a license it would be fair that both Consent Decrees give them the conditions to ask information about the requesting licensee's business, such as the importance of music to licensee's business and the economic value that music can bring to licensee's business, beside others that can help the understanding of the market the licensee operates in, therefore helping in negotiating a fair price for the requested license. Any and all changes in the Consent Decrees that result on fair compensation for creators and other music rightholders will increase collection and distribution of rights in the US and outside, as ASCAP and BMI do license and collect on behalf of foreign similar organizations.

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2. Until ASCAP and BMI get the information from the requesting licensee that will make possible to set price and conditions in accordance to the practice in the free market economies, i. e. as to create a relation between buyer and seller based on free will and transparency, it is fair that an interim rate is applied and in case of no agreement between the negotiating parties the case would be addressed to private arbitration for quick solution through a less expensive procedure than what is now the process for setting rates, according to the Consent Decrees. This will revert in the benefit of creators and other rightsholders all over the world, as the transaction and operation costs for ASCAP and BMI would go down, therefore administration fees can go down as well. For the sake of competition and good economic order ASCAP and BMI should be able to invest in increasing better services while charging for decreasing fees. To change the process of rate setting as it is now, based on the Consent Decrees, will result in more efficiency.

3. In the digital market commercial relations evolve very fast, new business models are offered to the public almost every day. We see new players coming to operate in the business of licensing music and collecting rights, offering reporting and monitoring services and they are not bound by consent decrees and any other rule than the market itself. This means that in the online digital market it should be possible for rightsholders such as music publishers, to decide the best way to license and monitor the use of their works. In this case, the Consent Decrees should allow ASCAP and BMI to release its members for direct licensing in the online business where music rightsholders will be free to negotiate and to participate in the development of the market. At the same time, rightsholders will be able to face directly the challenges such as competition with the sound recording industry. For the time being, we see the sound recording industry taking good advantage of the freedom they have to negotiate individually and directly with the digital service providers the price for the commercial exploitation of their recordings while ASCAP and BMI are restricted by Consent Decrees. This advantage comes in detriment of the interest of songwriters and rightsholders on musical works from all over the world. Although it is not the result of the will of record industry to harm songwriters and composers, the disadvantage songwriters, composers and publishers are experimenting has its connection with the restrictions that ASCAP and BMI have to go into free negotiation.

4. As technology evolves, collective management organizations are to be able to adapt to the new market and keep the business of licensing and collecting going on at the same pace. In the online business it is difficult to apply the same concepts we are used to apply when it comes to define what type of right is involved in each kind of offline business. There is no doubt about the clear difference between rights involved in radio broadcasting as opposed to stores selling copies of recorded music. In the online business there is not such clarity when we are to define rights involved in subscription streaming services that can work online and/or offline and other interactive services as opposed to an online music store selling tracks for download. The idea of having a copy is not so important for consumer as music is available online, at any time. This means that collective management organizations, and in case of ASCAP and BMI that are performing rights organizations, should be able to bundle rights and issue a single license on behalf of their members to all kinds of digital service providers. This would bring great efficiency for the advantage of the development of a healthy and profitable new market and consequently for the benefit of songwriters and all the rightsholders that opt to keep their membership valid for the



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licensing of all rights through ASCAP and BMI, not to forget the direct benefit of the consumer. If the Consent Decrees are changed in this direction digital service providers would be happy with a one stop shop where all rights on the music repertoire of the world can be cleared, licensed and compensated. Online business would bring positive results for all parties as transaction and operational costs would go down.

We do understand how difficult it can be for the Department of Justice to work on the review of ASCAP and BMI Consent Decrees. But, at the same time, we foresee a great opportunity of bringing improvement for the Collective Management network, when societies from all over the world will benefit. We do believe that the changes we propose herein, beside the global network of collective management societies will ultimately benefit commercial users, the new born digital market and mainly the final consumer. Music is more than food for thought, is part of our lives. Never before we had so much music being offered and consumed. Rightsholders should be able to benefit from this incredible opportunity provided by new technologies and rights management structure is ready to adapt to this reality.

We thank you again for the opportunity of expressing our concerns and ideas and we sincerely hope you take our comments into consideration when working on the review of both ASCAP and BMI Consent Decrees Review.

Sincerely,

Marisa Gandelman
Chief Executive Officer

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