Competition in Licensing Music Public Performance Rights

Transcript of Proceedings at the Public Workshop
Held by the Antitrust Division of the
United States Department of Justice

July 28-29, 2020

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Opening Remarks

- *Makan Delrahim, Assistant Attorney General for Antitrust, U.S. Department of Justice*

KARINA LUBELL: Good afternoon everyone, or good morning to our friends on the West Coast. Hopefully everyone can hear me? Great, welcome to the Department of Justice Antitrust Division's two-day, Public Workshop on Competition in Licensing Music Public Performance Rights. My name is Karina Lubell, I'm an Assistant Chief in the Division's Competition Policy and Advocacy section and I'll be your emcee for this week's workshop. We have an impressive lineup of speakers and what is guaranteed to be some lively discussions.

Before I introduce our first speaker, just a few housekeeping items. An agenda has been posted to the workshop website, a link to which was provided to you by your registration email. There'll be short breaks between sessions, but please feel free to log in and out as needed. The Zoom link that you received for all of today's sessions is the same. All members of the audience will be muted for the duration of the workshop. Should you wish to ask a question of one of the panelists, please submit it by email to atr.musiclicensing-workshop@usdoj.gov. That address was also provided in your registration confirmation email. If you have any trouble with your audio or a video or for any other technology issues, please contact AT&T Conferencing with Zoom Help Desk at 800-345-0857. And now without further ado, I'd like to introduce the Assistant Attorney General for the Department of Justice, Antitrust Division, Makan Delrahim.

MAKAN DELRAHIM: Thank you so much, Karina, for all your work and for helping us coordinate this workshop. For nearly three years now, I've had the unique privilege of serving as the Assistant Attorney General for Antitrust at the Department of Justice. And on behalf of the Department of Justice, I want to welcome you to our workshop today. I also want to thank our esteemed panelists for the presentations and perspectives they will share with us over the next two days.

Given these challenging times, I'm welcoming you to a virtual workshop rather than to one in the Great Hall of the Department of Justice, where we've held several of our earlier workshops on these matters.

You may ask what is our goal for this workshop? I have to say in one word, it's competition. Competition for the benefit of the American consumer; competition for the benefit of innovation; and competition for the benefit of the songwriters, composers and the artists.

I feel confident that this workshop will be informative and valuable to both the participants, the public and us at the Antitrust Division. After all, it's not every day that great artists like LeAnn Rimes, Pharrell and Jon Bon Jovi share a stage with boring antitrust lawyers and economists, but artists, like all workers, creators and innovators benefit from competitive markets. So, it is only natural that we should come together to discuss competition in music licensing.

This workshop is part of the Division's ongoing effort to promote competition in the music licensing industry. Those efforts began with consent decrees first secured as resolutions to antitrust suits brought by the Antitrust Division nearly 80 years ago. For students of history that is almost four scores sheets ago. These decrees between the Department of Justice and two organizations, ASCAP and BMI, continue to govern music public performance licensing today.

Like so many of you, I love music and it has played a special role in my life. When I came to the United States as a refugee from Iran as a child, I didn't speak a word of English. The music on the radio nonetheless spoke to me. "The Jazz Singer" was the first movie I saw in the United States. When Neil Diamond sang about people coming to America without a home, but not without a star, he was singing to me, I felt. And I'm sure many Americans respond similarly to that song.

That is the magic of music, it speaks a universal language. It can make us feel joy, can make us feel pain. Like nothing else, it can spark our imaginations and our memories. To this day, hearing Neil Diamond floods me with memories of my early days in America as a child. Not much else can do that. Each of us here has a song that transports us to a magic moment, evokes a feeling or simply inspires us to carry on. Music, perhaps most profoundly of all, has the extraordinary capacity to inspire hope and bring us together in times of division.

Many consumers of music today, wouldn't recognize eight-track tapes, cassettes or vinyl records, or even perhaps CDs. Technology continues to evolve how we enjoy our music. Digital streaming technology now gives us all access to almost any song anytime and anywhere.

Some may recall the Spanish ship that sailed to discover America, the Santa Maria. It carried the flag of Queen Isabella that bore the words, "Nothing Further" because they believed Spain to be the furthest point west in the world. When they discovered the new world in America, the Queen ordered the flag repainted to read "More Beyond." With new technology and new business models, we know there's more beyond for music.

Congress has responded to various innovations with new laws, such as the Digital Millennium Copyright Act in 2000 and the Music Modernization Act just recently in 2018. Some of the rules that governed the music industry today, however, are quite old. The Justice Department's consent decrees with ASCAP and BMI, for example, first went into effect in 1941. The year that United States entered World War II, with the bombing of Pearl Harbor. In that year, a gallon of gas was 12 cents and the average cost of a new home was a little over $4,000. Americans listened to music on the radio or on phonograph players, which were becoming more affordable. And there was a robust market for sheet music sales. Much has happened in the way we listen to music since then. As Churchill famously said, "To improve is to change, so to be perfect is to have changed often."

While I assume that no one would accuse the Antitrust Division of being perfect, we have periodically revisited and changed our views on antitrust enforcement based on new market realities or new economic discovery. After the Division's most recent review of the music consent decrees in 2016, the Department issued a closing statement signaling that we might revisit the decrees after resolution of, among other things, uncertainty surrounding fractional licensing. About a year later, the Court of Appeals for the Second Circuit concluded that the BMI consent decree allowed for fractional licensing.

After the Second Circuit's ruling, I began meeting with all interested parties about the decrees and we invited public comment on the decrees again in 2019. As part of this process, we received over 800 comments from members of the public, academics, and many of the organizations represented by panelists here today and tomorrow. This workshop is part of our effort to ensure a vigorous public dialogue about the state of competition in music licensing and, specifically, the ASCAP and BMI consent decrees.

This inquiry into the ASCAP and BMI decrees, also is part of a broader effort across the Division that began when I took this job to systematically revisit old consent decrees and determine whether they continue to serve the original purpose of protecting competition. Since 1979, the standard practice of the Antitrust Division has been to limit the period of consent decrees to no more than 10 years. Prior to that, decrees were often perpetual, thus when I became the Assistant Attorney General in '17, consent decrees from as far back as the 1890's remained on the books.

Among these many decrees, one of the oldest involving the music industry was a 1921 consent decree, enjoining Oscar Kern and five co-defendants from operating the Retail Music Roll Dealers Association of Philadelphia. The Retail Music Roll Dealers provided music rolls for piano players. At the time, it represented a big bet against a rival technology that was starting to gather steam, the radio. In Mr. Kern's words, "People will not be satisfied to hear music coming out of the air, they want the music right out of a piano or a talking machine in their own homes." Video might've killed the radio star, but the player piano consent decree was alive and well for nearly a century. We finally terminated it last April, about 13 years after Apple introduced first iPhone.

Another set of decrees involved coin-operated phonographs. A 1957 judgment, for example, prohibited a distributor of coin-operated phonographs from restricting their resale to certain people in certain geographic areas. We terminated that successfully last year as well.

Through our decree review process, we have given decrees like these a fresh start. As a result, nearly 800 outdated judgments are now history, thanks to the hard work and dedication of the Antitrust Division staff and the courts that have acted on our requests.

As we think about ASCAP and BMI decrees during this workshop, we are mindful of the priorities underscoring the judgment review initiative. That the free market, not enforcement by government decree should be the default. Where consent decrees are necessary, they must be justified by the current competitive landscape or by tomorrow's and not allowed perpetually to regulate an industry simply because they're the status quo.

We're also mindful of valuable lessons we have learned through our enforcement actions. For example, Ticketmaster and Live Nation entered into a consent decree in 2010, in which they promise not to retaliate against concert venues or using competitor ticketing companies. When they broke those promises, we enforced that decree. We also strengthened the decree in multiple ways, so that it would be easier to deter and detect violations going forward. These developments benefit American consumers and music fans alike. They also prove that consent decrees when they are justified and well-defined can be a valuable enforcement tool.

We recognize that the ASCAP and BMI decrees affect the lives of many Americans, from those in the music industry, to those who simply love listening to music. We also understand that the current music ecosystem has grown and evolved over many years in an environment in which the decrees have been in place. We therefore approached these decrees in an open minded and balanced way, inviting comments and engaging with all stakeholders.

These decrees deserve the utmost in careful consideration, but we also must recognize that consent decrees do not conduct music, but the market for music is conducted by these consent decrees.

Ultimately, it is critical that songwriters, composers and musicians enjoy the fruits of a free market for their creativity. As the U.S. constitution provided through Article I, clause 8, and as intended by the Sherman Act. As Abba put it, "Nothing can capture a heart like a melody can and without a song or dance, what are we?" Artists who give us those melodies and songs deserve economic liberty, they deserve the opportunity to pursue recognition and compensation consistent with the value of their work. That is the system our founders envisioned in drafting our constitution when they provided copyright protection for creative works.

I thank the artists and composers and the executives who will share their views over the next two days. And I thank all creative artists for enriching our lives and our souls with their music each and every day. We must ensure that America's unique combination of free expression and free enterprise can be an incubator for songwriters and musicians everywhere. We're all better for their creations. And as one of my favorite artists, Alicia Keys, counseled in her recent song, "Underdog," "keep on keeping at what you love." Now it's my privilege to introduce one of the greatest musical innovators of our time, Grammy Award-winning singer, songwriter, and global sensation who needs no introduction, Ms. LeAnn Rimes, thank you.

Songwriter Keynote (LeAnn Rimes)

LEANN RIMES: Thank you very much for having me here today to be a part of this process. I want to start by thanking Makan Delrahim, thank you so much to you and Antitrust Division of the U.S. Department of Justice for inviting me here and for hearing my heart as a music creator. Thank you for taking the time to listen to all of us songwriters, for listening to the actual creators, who are the only reason that every business that uses music to have a business has a business. I thought it would be fitting to start these workshops off reminding us of the magical gift of songwriting. Although Makan you did a beautiful job at that and made me cry.

So, it took someone sitting in a half-lit room somewhere with a half-eaten sandwich, a pencil and a pad of paper, their phone recorder turned on and them then inviting pure emotion to come down from the sky in the form of poetic melody and lyrics, taking pain and joy loss or forgiveness and turning it into an intangible form that everyone feels that they own because they can hear it in their head or their hearts when an iPad or a device is not turned on. The song didn't even exist until the songwriter helped bring it into the world for others to hear. If it feels like it is as free as the air that you breathe it is because the world has treated it as such. Songs like this, if you don't mind me singing for a moment.

> (Singing) How do I live without you? I want to know. How do I breathe without you, if you ever go? How do I ever, ever survive? How do I, how do I, how do I live?

That iconic song was written by, thank you. That iconic song was written by my friend, Diane Warren, and I was very blessed to be able to record that song. Yet, it begs me to question for every future young songwriter out there who has a dream in them of writing their own, "How Do I Live," how can they expect a fair wage for their work? How will they live? How can a new songwriter dream of their first hit on the 21st century and thriving as a songwriter, if there's an outdated 80 plus year consent decree that binds them to rules that no longer apply to the modern world, in which at this point in time, they couldn't even survive?

Look, I wasn't around in 1941 clearly, but I do give everyone the benefit of the doubt that the Department of Justice's consent decree upon ASCAP and BMI was the right decision at the time. Music back then was one of the most powerful driving forces of entertainment before TV, Internet, streaming, video games, you name it. The consent decree was probably needed, but after 80 years, the consent decree is a sad failure at anticipating the modern complexities of copyright and its enforcement for the benefit of its creators.

I have been an ASCAP member since 2004, as both a songwriter and a music publisher with my own company, Angel Fish Songs. Hundreds of thousands of businesses have used my songs, radio stations, streaming sites, bars and restaurants, movie studios and although ASCAP has done a fantastic job of taking care of me, the current consent decree binds their hands from protecting me to the best of their ability. You must take into account the singer songwriter performer, where a pandemic named COVID-19 has crippled touring for every singer, songwriter, at least for a year.

I'm happy to be here today as a voice, but I also feel the weight and responsibility for more than 1.7 million songwriters, composers and music publishers who depend upon ASCAP and BMI to

make sure we get paid for our hard work. That is a beauty of collective licensing, it does work. It makes things easy for businesses who use music and it also allows us as creators to focus on creating more music so we can actually earn a living.

And this is why modernizing the outdated ASCAP and BMI consent decrees is so important for songwriters like me. In the age of streaming songwriters, no longer make money through record sales anymore. And that means the performance royalty songwriters collect through ASCAP and BMI are our biggest source of income. For millions of other songwriters, especially people who are just starting out or those whose work is entirely behind the scenes, it is a question of paying their rent, putting food on the table and taking care of their children and for them. For them, the stakes could not be higher, especially now when our community of music creators is suffering so much from lost income because of the global pandemic.

We need the work ASCAP and BMI does for us more than ever. The problem of course, is that ASCAP and BMI are operating under consent decrees that have been in place for more than 80 years. It doesn't take a lawyer to see that these laws have not kept pace with how dramatically the music industry has changed since 1941. The American songwriter is one of the most government-controlled professions in American history. Songwriters being paid less than fair market value for what we create. There simply has to be a better way and there is a better way.

For some of us it's a question of fairness. Why should the businesses who use our music, some of which are the biggest multinational tech and media companies in the world get what amounts to special treatment under the law when it comes to music licensing? Are we really supposed to believe that these huge companies need the government to protect them from songwriters in order to get a fair deal?

And yet that is exactly what the consent decree essentially offers. Almost a full century of precedent has refined and modernized antitrust law since 1941. It is completely unfair for ASCAP and BMI to be restricted by consent decrees that reflect the antitrust doctrines of 1941 while the businesses that ASCAP and BMI license and compete with operate under the antitrust doctrines of 2019.

And so, on behalf of my fellow American songwriters, I am asking you to modernize the outdated ASCAP and BMI consent decrees. It gives us the flexibility that we need to adapt to all the new realities of the music industry and it lets us compete and innovate, so we can be paid fairly. ASCAP and BMI have proposed a reasonable path forward, take it, take it and let your legacy be that you chose to stand with songwriters, so they could provide for their families and keep creating the music that we all know and love.

Before I go, I just want to thank ASCAP, as an organization, for all you do, for all of your support for songwriters, and I want to thank you all for being here, thank you for having me and thank you again for the Antitrust Division and the U.S. Department of Justice for inviting me here today, I greatly appreciate your time. Thank you.

Session 1: Remarks from Stakeholders on the Consent Decrees

- *David Israelite, President and CEO, National Music Publishers' Association (NMPA)*
- *Michelle Lewis, Executive Director, Songwriters of North America (SONA)*
- *Elizabeth Matthews, CEO, American Society of Composers, Authors, and Publishers (ASCAP)*
- *Michael O'Neill, President and CEO, Broadcast Music, Inc. (BMI)*
- *The Honorable Gordon Smith, President and CEO, National Association of Broadcasters (NAB)*
- *Moderator: Karina Lubell, Assistant Chief, Competition Policy and Advocacy Section, Antitrust Division, U.S. Department of Justice*

KARINA LUBELL: Thank you LeAnn Rimes for taking time to join us today and for sharing your beautiful voice and your perspectives as a songwriter. Now, we'll turn to our first session, which is remarks from stakeholders on the consent decrees. We've invited several prominent industry participants to share their organization's views on the state of music licensing and the consent decrees. I will briefly introduce them one at a time, and each will have the opportunity to make a statement. There will be no Q&A for this session, you can find more complete bios of each of the panelists on the workshop's website.

We'll start by hearing remarks from Elizabeth Matthews, the Chief Executive Officer of American Society of Composers Authors and Publishers, better known as ASCAP, a membership association of more than 750,000 U.S. composers, songwriters, lyricists, and music publishers. ASCAP licenses the public performance of its members' music, collects license fees, tracks performances, and distributes to its members royalties based on their performances. Beth Matthews, I'll now turn it over to you.

Elizabeth Matthews, CEO, American Society of Composers, Authors, and Publishers

ELIZABETH MATTHEWS: Hello everyone. My name is Beth Matthews and I'm the CEO of ASCAP, the American Society of Composers Authors and Publishers. Before I begin and behalf of ASCAP, I wanted to thank Makan Delrahim and his team at the U.S. Department of Justice for providing us with the opportunity to discuss the modification of the ASCAP and BMI consent decrees.

ASCAP is an unincorporated membership association formed by songwriters back in 1914, over 106 years ago. We operate on a not-for-profit basis and we have over 750,000 songwriter, composer, lyricist, and music publisher ASCAP members.

Every time you hear a song, two separate copyrights are implicated, the musical composition and the sound recording. ASCAP and BMI only license the public performance rights and the musical composition. If you hear a song performed publicly, then it is more likely than not that the music user has a blanket license from both ASCAP and BMI.

Together with BMI, we account for over 90% of the U.S. market in public performance rights. We aggregate shares of musical compositions and license them directly in the U.S. on all platforms:

AM, FM, satellite, radio broadcast and cable television, streaming music and audio-visual services, such as Spotify, Amazon, Netflix, also retail establishment, bars, grills, and restaurants.

At ASCAP we license, the music we collect the money, and then we take the digital performance files and cue sheets, and we identify, process and match over a trillion musical performances each year in order to pay the correct ASCAP member their royalties by using our proprietary matching algorithm.

Both ASCAP and BMI license our music over a network of 100 not-for-profit collective management societies all over the world. All of these CMOs are connected to one another via digital tools and tech platforms to help us manage and track our data and musical performances, so that we may legally license U.S. musical repertoire on a global basis and pay the right ASCAP member their share of royalties from other countries.

Because foreign collection management societies do not operate under consent decrees, they are typically allowed to aggregate intellectual property rights other than the right of public performance, such as mechanical and synchronization rights, in order to drive market efficiencies for both buyers and sellers.

Every dollar that ASCAP collects in licensing revenue, nearly 90 cents is returned to our ASCAP creator and music publisher members in the form of royalties and the remaining 10 plus cents covers our overhead. As United States Supreme Court noted in the CVS case, the model of collective licensing, or aggregated clearance of copyrights, is an extremely efficient market tool because it is a business of scale at low transactional costs for both buyers and sellers.

For creators and music publishers, selective licensing is essential. They don't have to worry about licensing hundreds of thousands of U.S. businesses, collections, or matching and processing performances and instead they may focus their efforts on the creative process and keep creating the music that we all love.

For licensees, collective licensing is also essential. It is simply not practical for a licensee to transact separately with 2 million ASCAP members and BMI affiliates in order to avoid claims of copyright infringement and figure out how to get all of the stakeholders paid. By entering into blanket license agreements with ASCAP and BMI, they have immediate access to 90% of the world's greatest music.

It is common for most people to assume that the person who sings a song actually wrote the song, but that is often, as LeAnn described, not the case. Songwriters and composers are typically not famous and you would probably never recognize their name unless they were also a recording artist. They are the unsung heroes behind American music.

Without songwriters, recording artists would have nothing to sing and streaming services would have nothing to stream. Without composers, your favorite TV shows and movies would not be as compelling because their music actually drives the story. Songwriters and composers are dependent upon ASCAP and BMI because they often do not have salaries, healthcare benefits, or other reliable sources of income. Composers in particular are at risk because they are subject to

work-for-hire agreements and they are often pressured to accept buyouts or lose an opportunity to find work. Usually royalties from ASCAP and BMI are a music creator's only source of income.

The problem is that it's becoming harder and harder for songwriters and composers to make a living and without songwriters there simply is no music. One of the primary reasons that the marketplace is no longer working for songwriters and composers is that both ASCAP and BMI operate under consent decrees that were entered into in 1941 when the marketplace was entirely different.

Consent decrees are supposed to sunset after 10 years pursuant to DOJ policy in place since the 1970s. Our consent decrees however, have been in place for almost eight decades and, back in 1941, there was very little competition in the public performance space, terrestrial radio was the only form of mass media, the antitrust laws were quite different, and there was a genuine concern that ASCAP and BMI had too much leverage over licensees.

Fast forward 80 years, and the world looks very different. Today, competition is alive and well in the music marketplace. There are more PROs and more licensees ever before and it's not all about terrestrial radio. Today, there's broadcast, cable, and MVPDs and a thriving OTT industry. Barriers to entry for new market competitors are quite low and new competitors are rapidly entering the PRO and distributor space. The competition law has evolved and changed and direct licensing by music publishers has dramatically increased.

Licensees are large complex, powerful, mega technology and media companies, especially the FAANG companies, Facebook, Amazon, Apple, Netflix, and Google. They are smart, savvy, all lawyered up and wildly under regulated. I have yet to sit in a negotiation with one of these licensees and not feel as though songwriters' hands were tied behind their backs due to the consent decrees. It is crazy to think that, in 2020, songwriters are more regulated than Facebook.

The other factor that has changed is that consumers no longer buy music, they stream it. They no longer watch linear feeds, they binge on entire seasons of arguably some of the most compelling content in history on an on-demand basis.

The good news is, is that more music is being consumed today than ever before because of the present on demand consumption habits of consumers. However, the bad news is that while there has been tremendous growth in musical performances, the growth of payments for music publishers, songwriters and composers has simply not followed suit.

Today, songwriters are being diluted from dollars to fractions of pennies on streaming services and composers are increasingly not given an opportunity to share in back-end royalties when a show is successful. ASCAP and BMI need to be able to compete freely against unregulated market actors in order to escalate innovation. If we can compete and innovate, then we can meet future market needs.

What is clear to ASCAP and BMI is that licensees are not our enemies, they are our partners and they are our customers. We believe that competition is good, that competition drives innovation and efficiencies, that competition creates healthy economies.

Today ASCAP and BMI are not allowed to compete on a level playing field, even with their unregulated counterparts like SESAC and GMR, which has created market-wide imbalances and, frankly, confusion. The consent decrees are wildly outdated and need to be harmonized and simplified.

At a minimum, a bare minimum, ASCAP and BMI decrees should be modified to be the same. Today, ASCAP and BMI are not even on a level playing field with one another, which further distorts the marketplace. To prepare for a new world order of global distribution, live data exchanges, demand and supply side pricing, and experimental licensing initiatives, we have to be able to compete and innovate in a global market.

All we ask of the licensee community and the DOJ is that you help us modernize our outdated decrees. We do not seek an immediate termination of our consent decrees because we think everyone in this marketplace needs time to adjust and to prepare.

Instead of ripping off an 80-year-old Band-Aid, we suggest new and improved decrees that put all stakeholders on a pathway to an eventual free market. My good friend, Michael O'Neill, the CEO of BMI will cover some of the details of our proposal. Our measured approach is designed to minimize disruption in the marketplace for songwriters and publishers, but also to address the concerns of licensees. You should know that we compete fiercely like Pepsi and Coke. So, you may think it's a little strange for two competitors. to come together in full alignment on consent decree reform, but we both know that this is a problem that requires industry-wide cooperation.

We both feel strongly that we must create reliable and transparent data for licensees in order to drive a sustainable ecosystem for creators and for music publishers. We believe that all licensees have the right to know what fractional share interests they are licensing from us. To that end ASCAP and BMI are continuing to work on an initiative called Songview to provide a reconciled set of fractional share ownership information for all of the works in our respective repertoires. Our goal is to launch by the end of 2020.

All we ask of the DOJ and the licensing community is please do not leave songwriters and composers and lyricists back in 1941. Thank you.

KARINA LUBELL: Thank you, Beth. Next, we will turn to David Israelite, who will be followed by Michelle Lewis, Executive Director of Songwriters of North America. But first, David Israelite is President and CEO of the National Music Publishers Association, the trade association representing American music publishers and their songwriter partners. The NMPA's mission is to protect and advance the interests of music publisher and their songwriter partners in matters relating to the domestic and global protection of music copyrights. David, the mic is yours.

David Israelite, President and CEO, National Music Publishers' Association

DAVID ISRAELITE: Thank you, and thank you Assistant Attorney General Delrahim and the entire Antitrust Division for this opportunity to speak on really what is the most important issue facing songwriters today. My name is David Israelite, I serve as the President and CEO of NMPA,

which is the principal trade association representing all U.S. music publishers and their songwriting partners.

We are the voice of those small and large music publishers and their songwriters. We are governed by a board comprised of both major and independent music publishing companies, as well as songwriters themselves.

Prior to leading NMPA, I worked at the Department of Justice as Deputy Chief of Staff and counselor to the Attorney General. During my tenure, I had the privilege of serving as chairman of the Department's Intellectual Property Task Force, which examined all aspects of the DOJ's handling of IP issues.

An important part of our task was to promote free market principles and to protect creators' rights in the digital age. I'm honored to continue that work by representing the music publishers and songwriters who still fight to have their songs valued in a free and fair market.

The 2018 Music Modernization Act represented a major step forward for songwriters and publishers and greatly improved the landscape for licensing digital mechanical rights. Despite that progress, music publishers and songwriters continue to be constrained in their ability to realize fair market value for the public performance of their works because of the World War II-era consent decrees governing ASCAP and BMI.

This has become particularly problematic as digital streaming has emerged as the primary method of music consumption. Major global technology companies that operate music streaming services, such as Amazon, Google, and Apple hide behind the consent decrees, which were not designed to protect them, to avoid negotiating in a free market what they pay for music.

The consent decrees were never intended to protect digital giants, who they themselves made monopolies from songwriters and small business owners. In fact, the consent decrees specifically contemplated the exact opposite power balance, one in which small licensees would be protected from large collectives.

To remedy this historical misapplication of antitrust law, the ASCAP and BMI consent decrees should be modified to permit copyright owners to withdraw their digital performance rights from the ASCAP and BMI repertoires. This practice, known as selective withdrawal, would enable publishers and songwriters to decide whether to continue to license their digital rights through their PRO or to negotiate directly with the music streaming service.

To be clear, selective withdrawal would preserve the current blanket licensing system for the vast majority of licensees, including bars, restaurants, hotels, terrestrial broadcasters, and film and TV companies. Selective withdrawal would only impact digital screening services, who already engage in direct licensing negotiations with the very same music publishers and songwriters for other types of rights.

The current system is one in which music publishers and songwriters face an unfair choice when it comes to licensing their digital performance rights. They can withdraw their works entirely from

ASCAP and BMI and lose the benefits and efficiencies of blanket licensing altogether. Or, they can leave their catalogs entirely with their PROs losing the benefit of negotiating performance rights directly with streaming services and suffer under the burdensome regulation of the decrees.

There is no reason these options should be mutually exclusive. The prohibition on selected withdrawal is not rooted in copyright law or in antitrust law and changes are long overdue. In fact, such a change is actually complimentary to the existing consent decrees. If ASCAP and BMI are being regulated because they are deemed too big, the Department of Justice should support the right of property owners to exit, thus leaving the regulated companies less powerful.

The context of the Copyright Act is informative. Under U.S. law, the owner of a musical work has several exclusive rights, including the right to perform their work publicly. Anytime a song is streamed online or played on the radio, on television or in a business establishment, the user must first obtain a license from the copyright owner.

Congress deliberately left this right in the free market, similar to the rights regarding video synchronization and lyric licensing. Selective withdrawal would allow songwriters and music publishers who are not the subject of antitrust enforcement to exercise their constitutional and statutory rights.

Selective withdrawal is consistent with the purpose of the consent decrees. The decrees were intended to protect traditional businesses that use music from anticompetitive threats posed by the comparatively larger market power of the licensing collectives while preserving the benefit of blanket licensing.

However, the decrees did not and could not have accounted for the vastly different power dynamics that exist in the market today with regard to digital services. Today's digital licensees are valued in the trillions of dollars. The vast majority of music streamed in the U.S. is consumed by one of five very large digital service providers or VSPs, Amazon, Google, Apple, Spotify, and XM Sirius, which owns Pandora. These companies both individually and collectively dwarf not only every individual music publisher, but the entire music publishing and songwriting industry as a whole.

Tomorrow, the House of Representatives Judiciary Committee will hold a hearing with the CEOs of Amazon, Google, Apple, and Facebook to address antitrust concerns related to their dominance in the digital market. What do all of those giant technology companies have in common? They are all being unfairly advantaged to enter negotiations with songwriters due to antiquated consent decrees from 1941.

Pause for a moment and think about that, due to the unintended consequences of consent decrees that never end, the giant technology companies that will be under congressional scrutiny tomorrow are being protected from songwriters.

These companies are nothing like the fledgling broadcast industry of the 1940s, yet they benefit from the same protections. The application of the consent decree simply does not make sense when it comes to DSPs who are able to license performance rights directly and whose market power is exponentially larger than that of the music publishers and songwriters.

These tech giants do not need market regulation to shield them from the bargaining power of songwriters. They can and should be negotiating these rights in a free market. They are fully capable of licensing music directly; they do it all the time.

All of the digital streaming companies in the market negotiate directly with record labels for the use of sound recordings, without a consent decree or statutory license hanging overhead. They also negotiate with other PROs that operate in the free market that are not subject to consent decrees. They even negotiate directly with publishers and songwriters for lyric and video synchronization rights in a free market without a PRO-like middleman.

The entire economic chain of a digital services business exists in the free market with the singular exception of paying for musical compositions. Digital services are absolutely capable of obtaining licenses in a free market, they would just prefer not to do so. But convenience alone is not enough to curtail the rights of creators without a basis in copyright law or antitrust law.

The prohibition on selective withdrawal is not rooted in antitrust law, it only exists as a matter of consent decree interpretation. Furthermore, the prohibition on selective withdrawal does not serve any actual antitrust purpose. It does not stop or prevent ASCAP or BMI from engaging in anticompetitive practices, the opposite. It stops publishers and songwriters from engaging in PRO competitive practices.

This impact is especially improper considering that antitrust law is an enforcement mechanism, not a regulatory one. The prohibition reaches beyond the realm of antitrust enforcement to act as a de facto regulation on music, publishers and songwriters who were never alleged to have violated antitrust law in the first place.

To be clear, NMPA supports the other ASCAP- and BMI-proposed modifications to the consent decrees with selected withdrawal of digital rights as part of such new decrees.

There is a reason that in 1979, the Department of Justice determined that all future consent decrees would sunset within 10 years. It is simply impossible to predict changing market circumstances that far into the future. While the Department may find justification for continuing the decrees in certain situations, there is no justification for continuing them when it comes to the digital streaming world.

Selective withdrawal will preserve the traditional blanket licensing system for the traditional licensees, for whom it was designed, while creating a fairer and more competitive digital marketplace for performance rights. Thank you.

KARINA LUBELL: Thank you, David. Michelle Lewis will present next followed by the Honorable Gordon Smith, President and CEO of the National Association of Broadcasters. But first, Michelle Lewis, who is a singer, songwriter, composer and music creators rights advocate, and currently serves as the Executive Director of Songwriters of North America, SONA, a nonprofit she cofounded in 2014 in response to the complexities and disparities and digital royalties paid to songwriters and composers. So, whenever you're ready, Michelle.

Michelle Lewis, Executive Director, Songwriters of North America

MICHELLE LEWIS: Hi, I just have to apologize in advance you might hear dogs or kids in the background, but I'm Michelle Lewis here in Valley Village, California. I'm the Executive Director of Songwriters of North America aka SONA, and I'm also an American songwriter and I'm on the board of ASCAP.

First of all, I want to thank Makan Delrahim and the Antitrust Division of the U.S. Department of Justice for inviting me to give an opening statement today. If there's anything I hope you take away from my presence here today is that the people who create music to be considered and included in any deliberation about consent decrees, that govern ASCAP and BMI, as we are very much affected by them. Having me here is an appreciated gesture towards that end.

SONA is a creators' rights organization, lost some balance there. Like Nashville Songwriters Association international, the Music Artists Coalition, and the Society of Composers and Lyricists, we are a membership organization, which means we spend our time and resources building and educating our communities and teaching songwriters how to advocate for themselves. We are entirely volunteer-run, myself included, and our membership is varied and diverse. We have members who whose names you would recognize, who had number one hits, spent years on the charts, and we have members who are just starting out, working full-time jobs as they learn how the business works. But the majority of our members are like me, middle-class songwriters, working behind the scenes, whose names you don't know, but whose work you do. In fact, the work of SONA's members is all over the radio, all over TV, all over the streaming platforms, video games and movies and in the before times, they were in bars and restaurants, stores, and gyms and hopefully we'll get that back. So, I'm here to remind you that our music and the music of songwriters and composers around the country, is the reason you're all here. It starts with us. Without the songs there wouldn't be much to talk about in these workshops.

So, as you discuss these consent decrees over the next two days, I ask that you think about protecting, not just the people who license music, but the people who create that music, even when there isn't a songwriter or a composer on a specific panel, like in session two, where the conversation may be limited without a composer participant.

As a songwriter, our songs are all we have. If you don't perform your songs, you don't have tickets or T-shirts to sell. And, a songwriter just has her songs, those songs are everything. Even though I've made a living almost entirely from writing songs for the past 20 years, I have to admit, I didn't know about consent decrees until five years ago. In 2015, when I saw that a hit song that I'd written, a song called "Wings" for the group Little Mix, had earned fractions of a penny per stream, adding up to virtually nothing, despite millions of streams on digital services and millions of views on YouTube, I got to experience the new reality for songwriters in real time. All the songwriters I knew were experiencing the same thing. Even when we managed to score a hit, it didn't generate significant income from streaming. Several of us ended up in the office of the attorney, Dina LaPolt, who proceeded to school us on all the regulations that bind a songwriter's income, the Copyright Royalty Board on the mechanical side and consent decrees on the performance side.

Imagine being a professional songwriter for 15 years and learning for the first time that the U.S. Department of Justice Antitrust Division has a role in determining how and what you get paid, pretty shocking. While it may seem normal to the attorneys here, for those of us hold away in our studios, churning out our life's work day after day, it makes very little sense how an antitrust decision made in 1941 would have any bearing on what we get paid now.

So, it is incredibly significant for me to be here today, because when I think about SONA's origin story, I realized that my songwriter friends and I founded SONA because of the consent decree during the last period of Justice Department review. Having learned with the consent decrees were, we were inspired to remind the attorneys of the Division back then, there are human songwriters, and composers that have to live with the effects of their decisions.

We participated in the review process then in good faith, we made phone calls, we met with attorneys in the Division, we wrote letters and, at the time, we were asking for regulatory relief in a rapidly changing music ecosystem that everyone has been describing so far. A lot of the things we were asking for were in the Songwriters Equity Act at the time, but after a year of all those phone calls and meetings, after asking the Division for health and relief the answer, we got back on all of our issues was "no" and compounded by a ruling on a hundred percent licensing that would have made getting paid for our work even more difficult.

That's a little weird for me, admittedly, because at that point in 2016, my brand-new organization, our little 501(c) that could, sued the Antitrust Division of the Department of Justice over that ruling. BMI also challenged the ruling and asked the court to declare that its consent decree doesn't require full work licensing. Their rate court judge agreed and eventually got the ruling overturned. But while we're here, let me just reiterate how bad hundred-percent licensing would be for songwriters since it keeps coming up as a potential change. Aside from it being an illegal taking of our property, because our work could be licensed by parties we haven't authorized, it would throw our personal businesses into chaos. Individual songwriters would have no way to track or show payment if there were royalties were collected by PROs that they have no relationship with. There would be endless disputes and lawsuits, and it wouldn't work as well for the licensees as they think it would, as many songs legally can't be licensed in a hundred percent basis anyway. All of this remains true. In any case, after BMI won their case, we were happy to withdraw our suit without prejudice, so we're good now, hopefully, all right? We can move on.

After that, SONA moved on to advocating for the Music Modernization Act, which thankfully passed and included some really good provisions for our performance royalties, including being able to use comparable rate for the master as evidence in rate court and a new rule requiring the judges overseeing the consent decree proceedings be chosen randomly from a wheel of judges, which as a non-lawyer, I think it's a really funny visual.

But even with those changes, we're still being threatened. There are looming threats from licensees about going to the Hill with new legislation that would basically create a compulsory license for our performance royalties, which would be awful for us. We would like less regulation, not more, and it's the opposite direction from a free market.

So, now songwriters find ourselves in a squished position between the rock of rate court and a hard place of compulsory license. It really isn't fair, so over five years, our rallying cry has gone from "please help the songwriters" to "please don't hurt us" and that's not fun. So, we understand that ASCAP and BMI have come up with a proposal for a revised decree. And if those decrees create a more level playing field for songwriters, then it seems like a fair and reasonable middle ground.

I also want to be very clear that despite the decrees, SONA supports a healthy PRO system. For nearly all of us, signing up with ASCAP or BMI was our first step in making money as a music creator and middle-class songwriters and composers rely on them so much. When SONA does educational events, we ask the songwriters in the audience what their PRO does for them. The answers are always the same, they mention the networking events, the collaborator connections, handholding through the works registration process, and the member services. And, of course, they mention getting paid.

But because we're songwriters, the personal connections are so important to us. Our PRO's are our home bases, our touchstones, the writer shares of our songs, which we entrust to the PROs, to our chosen PROs, are sacrosanct. It's what we understand and what we connect to.

Therefore, we do support the ASCAP and BMI asks for a streamlined decree as a pathway forward.

If you do revise the consent decrees, however, on behalf of SONA songwriters and composers, I ask first that you do no harm. This means please don't put a hundred-percent licensing back on the table or do anything to undermine the rights of songwriters to be paid for their writer share through the PRO of their choice. Also, please tread carefully with the publishers' ask for selective withdrawal or, most of all, don't make any other changes that might result in compulsory legislation.

Whatever you do, please remember the creators, keep us in the conversation, include songwriters, include composers, we are the ones who will be the most impacted by whatever decisions you make. No one is more affected by the changes to the decrees than us.

So, we need you to help us, we're quintessential little guy, we don't have a resources or lobbyists that the other stakeholders do, but we do have heart, we do have music and without songwriters, there is no music. Without the music, there's no music business, and so if you want to protect the music business, I implore you to protect the songwriter. Thank you for your time.

KARINA LUBELL: Thank you, Michelle, now we will hear remarks from the Honorable Gordon Smith, who will be followed by Michael O'Neill, President and CEO of BMI. First, Senator Smith joined the National Association of Broadcasters as President and CEO in 2009. Prior to joining NAB, he served as a two-term U.S. Senator from Oregon and later as a senior advisor in the Washington Offices of Covington & Burling. The floor is yours Senator.

The Honorable Gordon Smith, President and CEO, National Association of Broadcasters

GORDON SMITH: Let me start by wishing you all a good afternoon and express thanks and appreciation to my esteemed friend, the Assistant Attorney General of the United States. And also,

my appreciation to the Department of Justice for inviting me to offer my thoughts as the President and CEO of the National Association of Broadcasters on the future of the ASCAP and BMI consent decrees.

On behalf of America's local radio and television broadcasters, serving communities across the country, we welcome this opportunity to discuss why the ASCAP and BMI antitrust consent decrees continue to have a place, if not to be essential, and our very significantly concerns with a so-called "modified skinny decrees" currently under consideration. Without the framework, the current consent decrees provide, whether perfect or not, it is easy to see that a fair competitive market for the licensing of musical works then and today simply would not exist.

Despite the Department of Justice finding, less than five years ago, that the decrees were essential to preserving competition, we're yet again, being asked to consider modifications to them. For broadcasters and many other licensees, this endeavor raises some very major concerns.

While NAB always welcomes conversation about ways to improve and modernize government regulation, most of the publicly proposed modifications would likely harm licensees and consumers. It would stifle innovation and, frankly, entirely miss the point.

At the outset it's critical to recognize that these decrees have been worked through line by line over the course of 80 years, with the parties and the courts developing understandings and interpretations of nearly every word. Well, getting skinny sounds like an appealing aspiration, especially at my age, in this instance, it's actually quite misleading. Changing or eliminating sections or paragraphs or sentences or even words in the decrees can have harmful and unintended consequences. These are not changes that can be consummated following a workshop or a roundtable. If the decrees were to be modified, that could and should only come after the public fully vets any specific proposals to do so.

Moreover, there are three critical issues that we hope and really insist the DOJ must address before we get to any of the subjects on the agenda for these roundtables. The first of these is fractional licensing, it's been mentioned already. The single biggest change to the PRO consent decree landscape in the last few decades is a federal court's recent mistaken interpretation that the decrees do not require full-work licensing. As a result of this ruling, licensees may very well pay ASCAP or BMI for the right to publicly perform works, but actually have no right to use them. Any discussion of modifying the decrees must start with requiring whole-work licensing through indemnification or some other mechanism that may be created.

Second, also somewhat buried in the details of the roundtable is the PROs' failure to be transparent about their repertories. Shockingly, there is no real time database among the PROs that indicates, with any certainty, for what compositions licensees have contracted. We don't know. What other businesses ask to pay for something and yet have no way of knowing what is included in what you're buying? This issue is exasperated by the federal court's refusal to find that the existing decrees require whole-work licensing.

Finally, the Justice Department should reassess the breadth of the parties to which these consent decrees apply. With the growth of SESAC and the emergence of powerhouse PRO, Global Music

Rights, broadcasters and other licensees are left without full protection under DOJ's watchful eye. If we're going to get serious about reforming the decrees, all PROs must be brought within that purview. PROs do not compete with each other for licensees and licensees are effectively forced to license each PRO's repertory. This too has been made worse by fractional licensing, as even a relatively smaller PRO can simply amass minority interest in key works and force licensees to pay above-market prices for the right to make use of their ASCAP and BMI licenses.

So, when it comes to the modifications that are publicly proposed by ASCAP, BMI, and the National Music Publishers' Association, we plead with the Justice Department to proceed with extreme caution.

For radio broadcasters, being able to play a wide array of music is essential and that is what listeners expect and demand. Whether one owns one radio station or hundreds, it's essential to have immediate access to these catalogs and at a reasonable rate. Moreover, radio stations that air syndicated programming, commercials, and live events, they must have the Public Performance Rights to use the full catalog of musical works in order to operate lawfully. Without it, you have the Wild West: no architecture, no certainty for how to proceed lawfully.

Television stations have often even less control regarding the music that goes over their air. Each day, TV stations have music interspersed throughout their programming. Much of those musical performances occur in the background of stations, movies, television shows, live sporting events, local news, and commercials. Stations have no editorial control for much of their content, such as network and syndicated programming, live events, and commercials. So, if a station lacks the rights to publicly perform a single musical work because it was in a repertory it did not license, it would have no practical ability to mitigate the risk that an offending song might air. This would expose the station to the threat of significant penalties under federal copyright law.

Beyond the oft-discussed essential ray provisions of the decrees, NAB opposes any modification of the decrees that would allow for so-called selective withdrawals. I understand what the previous presenter said. I feel for her and, yet, as television and radio broadcasters continue to innovate in the digital space to better serve our audiences, any modifications of the decrees that would enable rights holders to selectively withdraw from ASCAP and BMI to leverage their market power in direct negotiations with digital services would raise these same anticompetitive concerns.

Given the complexity involved with the modifying of the decrees and the unique challenges of our nation's music licensing regime, we believe that Congress must be and is the best vehicle for modernization. Now I know firsthand how cumbersome Congress can be, but Congress just recently legislated with the decrees in mind and they recognize, indeed they depended on, how much the industry has grown up with the decrees as an essential part of the business. Congress, though cumbersome, is equipped to balance all stakeholder interests to develop the most comprehensive solutions for all parties. The MMA was not easy to do, but Congress eventually did it. Good ideas persisted in long enough that are fair to all concerned and practical in their application eventually become good law. So, if we focus on Congress, this would of course, ensure that all the PROs are subject to the rules and regulations governing music licensing and not just ASCAP and BMI.

The ASCAP and BMI consent decrees have effectively prevented significant harm to licensees, songwriters and consumers. And they've ensured that radio and television broadcasters are able to fairly, efficiently, and transparently license musical works to the benefit of their audiences, the American people. For these reasons, the Department of Justice should not just terminate, sunset, or change the decrees at this time. Instead, the Department should work with the many legislators who weighed in during the enactment of the Music Modernization Act, and who are anxious to be engaged by the way, and help them to develop an alternative framework prior to any action that the Department may take.

To that end, I look forward to the discussion over the next few days and a continuing dialogue with ASCAP and BMI and others in the industry, all stakeholders, to preserve broadcasters' access to music and to serve your and our interests as creators, publishers, and consumers. And to that end, I thank you.

KARINA LUBELL: Thank you, Senator. Giving our final opening statement is Michael O'Neill, president and CEO of Broadcast Music Incorporated or BMI. Mike has been at BMI for more than 25 years, in his current role, he oversees all of BMI's operation and directs the company's growth to benefit BMI songwriters, composers, music, publishers, and licensees. I'll now turn it over to you, Mike.

Michael O'Neill, President and CEO, Broadcast Music, Inc.

MICHAEL O'NEILL: All right, I wanted to say good afternoon to everybody. It's always nice having to clean up in a group session. I appreciate that, but I appreciate what Mr. Delrahim has done by gathering us all together today and for your continued efforts to review all consent decrees to determine whether they still serve their intended purposes today and whether they serve the marketplace.

And I'm excited for the opportunity, of course, to continue a very important discussion regarding our consent decrees. Now, I don't think it will come as a surprise to anybody, you've heard me say many times we believe that the decrees should be terminated, but we also believe that an orderly transition in that termination will lead to a better world. We believe that termination will lead to greater competition and that competition, fair competition, is a good thing.

There are now six, possibly seven, businesses that have gotten into, or want to get into, the performing rights space. It's kind of like the new yacht, everybody wants it. The PRO business has become very popular and it's not a surprise to us because we have always believed in the value of what we do and our mission to advocate on behalf of America's songwriters and composers.

At the beginning of this year, BMI and ASCAP, well, we were very hopeful that we could have reached a resolution on decree reform. But unfortunately, as we all know, the COVID-19 pandemic truly altered the way we work, the way we live, and it's consumed all of our collective focus. All of our businesses have been touched by this crisis, the DOJ, BMI, ASCAP, the publishers, our licensees, our songwriters, and, of course, our composers. It's a very different world than the world we lived in just this past February.

And that was why I was so happy when Mr. Delrahim called me a few weeks back and he said he wanted to put these workshops together. That all of the work we put in, that all of the papers that were submitted across the industry, and that all the conversations that we've had, as a result, will continue.

As you know, and as you've heard, BMI's consent decree remains our contract with the government. It outlines the rules under which we do business and it was most recently updated in 1994. That was 26 years ago. And when I say updated, it really wasn't updated much. I think it's pretty clear to say that the consent decree is out of date. I think it would be an understatement to say that.

Our industry is very different and is in a different place than it was in the early nineties. First, I mentioned there was more competition in our space than ever before. We compete with PROs that are not regulated and are already operating under the benefits of a free market. Publishers are doing more and more direct deals with licensees. Even foreign performing rights organizations are able to license in the U.S.

Then if you look at the licensee's equation, as Beth Matthews mentioned, we are by no means a Goliath in that scenario.

Then, of course, technology has already altered our daily lives. It's transformed, as you heard from Michelle, the way music is created, consumed, and tracked. BMI and ASCAP, we have to evolve with those changes.

We have to adapt our practices to meet the needs of those we've been entrusted to serve. And that's, of course, our songwriters, our composers, and our publishers. We advocate on their behalf every day to protect their rights and maximize the value of their music.

Today, BMI is proud to represent over 1 million songwriters, composers, and publishers with more than 15 million musical works. BMI and ASCAP are the only two companies in this space that operate on a not-for-profit-making basis. Almost 90 cents of every dollar we generate in licensing fees goes back into the pockets of our affiliates. We're very proud to operate with their best interests in mind.

Now, equally as important are our business partners, many of whom we have longstanding, trusted relationships, people like Senator Smith and the NAB and the businesses they represent. Collectively BMI licenses, hundreds of thousands of businesses and they're essential, these partnerships that we've earned their trust through our service and we have deep respect for them.

Now, the music our songwriters and composers create is vital to these businesses and these businesses are key to the livelihood of our songwriters and composers. That's our role, when you think about it, it's that bridge between the people who create music and, of course, the people who use it and deliver it to listeners and viewers around the world.

In the last five years, BMI's consent decree has been the subject of two reviews by the Antitrust Division. The first one we asked for and like the old adage said, be careful what you ask for because

instead of modifying our decrees, which was the intent, the issue of hundred percent or whole work versus fractional licensing was raised by the Department of Justice.

I won't bog today down with all the ins and outs of that issue, but it's a model that would have seriously jeopardized the creative and financial freedom of our songwriters and composers, but also hampered licensee's ability to have access to the music they want to play. BMI had to take the DOJ to court and let me tell you, that's not very fun. It wasn't a good day when that happened. I'm happy to say it wasn't Mr. Delrahim, it was his predecessor. I'm also happy to say that we won.

The second review is the one currently taking place now, and it wasn't raised by us, it was started, as you heard, by the DOJ in their effort to review all consent decrees. And while we didn't start it, we once again are hopeful for change. As you've heard there are no modern decrees that live on in perpetuity. So, we welcomed the idea of terminating them as long as it's done gradually and thoughtfully.

We believe that a free market is the best way for music creators to be rewarded for their hard work and intellectual property. It would create a more productive, efficient and level playing field for everyone. But we also understand that change is hard, our decrees have been in place for nearly 80 years and suddenly terminating them, we believe, would cause chaos in the marketplace, and we want to avoid that at all costs. And that's why, as Beth said, Coke and Pepsi came together and issued a proposal that would gradually lead us to a free market while protecting all parties.

We proposed an orderly transition that includes actually forming new consent decrees, which, like all modern decrees, would include a sunset provision. In discussing this with our licensees, we determined that the new decrees should contain four key provisions, or the core four, as we like to refer to them.

First, it would allow all licensees to gain automatic access to the BMI and ASCAP repertoires, and the ability to immediately begin playing our music as long as they also begin paying immediately. Music is not free and neither is any other type of intellectual property.

Second, we would retain the rate court process for resolution of rate disputes as refined by the MMA. Let me mention that for BMI and for ASCAP, the overwhelming, the vast majority of deals are done at the negotiating table, not in court, as some have said. The judges rarely see us, but when they do it is always over a dispute. We're saying that we would keep that resolution mechanism.

Third, we would preserve a system that allows songwriters and publishers to do direct deals with licensees. As we've seen over the years, this is an important provision, not just for our licensees, but also for our publishers, songwriters, and composers.

And fourth, at a minimum, we would keep the current forms of licenses that the industry has grown up with, grown accustomed to, while allowing us to offer new forms of licenses and experiment with innovative business solutions.

Now, I want to be clear that these provisions don't necessarily benefit ASCAP and BMI today, but they benefit the industry and will help facilitate a meaningful transition to a free market. But I caution us, we have to be vigilant.

As we've seen and as you'll hear, there are some organizations that are using this moment to their advantage. Unregulated parties and licensees are using this review of our consent decrees to try to increase regulations on BMI and ASCAP, not for the benefit of the songwriters or composers, but, we believe, for their own benefit. Frankly, this just amazes me and is completely contradictory to what the DOJ is trying to do. Issues like hundred-percent licensing, length of a songwriter's contract, payment schedules, similarly situated licenses are all coming into play. Issues that are more about regulating the marketplace through our consent decrees than the actual consent decrees themselves.

And then, as you heard this morning, there is a position being raised by the National Music Publishers' Association on rights withdrawal. Today, the majority of digital deals are already done on a direct basis with the publishers. The publishers have already bundled most of their rights and done direct deals that don't involve BMI or ASCAP.

That being said, overall, we agree with the concept. However, where we disagree is on the timing. I truly believe that advancing this issue now, given as you've heard from the NAB, how divisive this concept is with music users. We will find ourselves with a push in Congress for compulsory licensing. To think otherwise it's simply foolish and, by the way, that push in Congress will lead us right back into discussing whole-work or hundred-percent licensing, which we all fought so hard against. You've heard the NAB's position today, what do you think the digital companies' positions are today? Withdrawal, may be what the publishers want, but this outcome, this push in Congress, would not be in the best interests of our songwriters and thus, we can't be for it.

Let me stress, compulsory licensing is not where we want to be. It may seem like an easy and efficient solution, one license, of course, that covers everyone for everything, but that's far from the truth.

It would have dire consequences for the music business. First, we've seen compulsory licensing depress pricing, just look at the history of mechanical licensing. Second, it means even more government regulation.

We see no scenario in which more government regulation of the music industry would benefit anyone. We need to ensure that the profession of composing and songwriting doesn't simply turn into a hobby because no one can make a sustainable living by writing music under compulsory licensing.

Our plan would avoid this while giving the market the time it needs to adjust. Once we get there, there are antitrust laws already in place and, of course, people like Mr. Delrahim that would continue to govern all parties when the decrees eventually go away.

And I want to note that, in nearly 80 years, BMI has never been found by the Department of Justice to be in violation of the terms of our decree or any antitrust laws.

In closing, I think it's fair to say that there are a lot of different perspectives on decree reform, but there's also a lot of points I'd venture to say, we all agree on.

We all want more transparency and I have to respectfully disagree with Senator Smith, as the info is already available, and we're simply making it better each and every day. We all believe that competition is beneficial and necessary. We want to see change and we want to do it in the right way that makes sense for everyone. I'm confident that we can find a path forward together to ensure a vibrant future in music and for the businesses that use it.

Mr. Delrahim, once again, I want to say thank you for shining a spotlight on these issues. With our proposals, we believe that we will protect competition and drive innovation while ensuring that the American songwriter and composer are fairly compensated for their work. I want to thank everybody who was on the panel today and especially, once again, thank you, Mr. Delrahim.

KARINA LUBELL: Great, thank you, Mike. That concludes our first session. We'll now take a five-minute break while we transition to our second panel. So, we will reconvene at 2:00 PM Eastern Time, thank you.

Session 2: Public Performance Licensing Alternatives

- *Jackie Brenneman, General Counsel, National Association of Theatre Owners*
- *Ted Cohen, Managing Partner, TAG Strategic*
- *David Kokakis, Chief Counsel, Universal Music Publishing Group*
- *Janet McHugh, Executive Director, TV Music License Committee*
- *Mike Steinberg, Executive Vice President of Creative and Licensing, BMI*
- *Moderator: Yvette Tarlov, Assistant Chief, Media, Entertainment, and Professional Services Section, Antitrust Division, U.S. Department of Justice*

KARINA LUBELL: Welcome back. So, we'll now begin our second panel on public performance licensing alternatives. The panel will be moderated by my colleague, Yvette Tarlov, who is Assistant Chief of the Media, Entertainment, and Professional Services Section at the Antitrust Division. Yvette.

YVETTE TARLOV: Thanks Karina. Good afternoon everyone. As Karina mentioned, this panel will address public performance licensing alternatives, including direct, adjustable-fee, per-program, and per-segment licenses. And whether there is a genuine choice between these alternatives and blanket licenses today. We will also discuss source and through to the audience licenses. Finally, we will address the transparency of the ASCAP and BMI repertories and whether that transparency is sufficient today to support alternatives to blanket licenses.

We have an extremely knowledgeable and distinguished panel of speakers. Their list of accomplishments is long, so I will be brief. First, we have Mike Steinberg, Executive Vice President of Creative and Licensing at BMI. Mike leads all of BMI licensing efforts and is responsible for all domestic licensing, including digital media, radio, television, cable TV, satellites, and other categories, including restaurants and hotels.

Next is David Kokakis. David currently is the Chief Counsel of Universal Music Publishing Group, where he oversees Universal's global digital initiatives, business development, contract negotiations and litigation. Prior to Universal, David was a partner in a media company, practicing entertainment law, and also operated and owned several bars and restaurants in New York City.

Our third panelist is Janet McHugh. Janet has served as the Executive Director of the Television Music License Committee, or TVMLC, for the past four years, TVMLC represents approximately 1,200 small and large local television stations throughout the United States in connection with music performance and licensing. Prior to TVMLC, Janet was an attorney with the Sinclair Broadcast Group, where she also handled negotiation dealing with the licensing.

Next, we have Ted Cohen. Ted had a long and storied career in the entertainment business, he currently serves as Managing Partner at TAG Strategic, a digital entertainment consultancy based in Los Angeles. He also serves as the head of corporate development for Media Tech Ventures, an Austin-based venture development group. Ted previously was with EMI Music, where he was instrumental in crafting licensing agreements upon which the Apple iTunes store and Rhapsody Music Subscription Services were built.

And finally, we have Jackie Brenneman. Jackie serves as General Counsel and Director of Industry Relations for the National Association of Theater Owners, or NATO. NATO is a trade association that represents movie theater owners in all 50 States and a hundred countries around the world. Jackie leads NATO's legal strategy on a range of issues, including intellectual property and antitrust.

So, we heard Mike O'Neill of BMI talk about the four key provisions, or I think he called them the core four, of a proposed modified decree. One of those core four is non-exclusivity. The current decrees require that public performance licenses be granted on a non-exclusive basis. In other words, licensees should be free to contract directly with songwriters and publishers for public performance licenses. David, are direct licenses viable alternatives to blanket licenses under the current decrees? Why or why not?

DAVID KOKAKIS: First, thanks for the opportunity to participate today and thank you for the opportunity to put on a suit and tie for the first time in five months. The concept of direct licensing is viable in theory, but in practice, there are complications that we have to look at from both the licensor's perspective and the licensee's perspective.

From the licensor's perspective, they often require foreign rights, meaning rights that may only be brought in by foreign societies. So, we, as publishers are only able to grant direct performance licenses for songs written by songwriters who are direct PRO affiliates in the U.S. So, there's a hole in the licenses when we're asked to grant direct performance licenses on a blanket basis.

Adjustable fee blanket licenses also frustrate the process because sometimes the methodology for offset and reduction aren't implemented in practice in a way that is fair. So, licensees are in a position where they often have to double pay for rights, which is admittedly untenable. And sometimes the societies have done things to frustrate the ability of licensees to take direct performance licenses, such as restricting the level of direct licenses that may be issued by publishers, in exchange for giving advances to writers.

So, from the licensee's perspective, sometimes it's complicated. From a licensor's perspective, meaning the publisher in this instance, it's often difficult because we can't freely compete against the societies when they're hamstrung by the consent decrees and the licensee community generally knows that they'll be able to get an artificially low rate because of the current dynamic that exists.

So, it should be viable, we'd like it to be a viable alternative, but changes need to be made in order to ensure that. Now, the consent decrees don't need to be eliminated. They need to be modified and modernized. They don't need to be subject to a sunset either; they just need to be reevaluated from time to time to make sure that they're keeping up with the needs of the changing market.

One of the ways to ensure that direct licensing is viable is to grant the ability for selective withdrawal, which is something that we had years ago when we negotiated this right through the societies. And the bottom of the market didn't fall out. It was something that enabled us to achieve fair market value for the creators who we represent in direct negotiations with various larger tech companies.

And the scope of the rights that we're looking at withdrawing a really limited in nature. So, it doesn't involve general licensing, it doesn't involve broadcast TV, it doesn't involve cable, it doesn't involve radio, it involves only the larger tech companies that, as has been pointed out by Mr. Israelite, do not need protection from the DOJ. So, in order to facilitate direct licensing, there are things that need to be done in order to make it viable.

YVETTE TARLOV: Thank you, Mike, do you have any response to that?

MIKE STEINBERG: Yes, I'd like to respond but, first, I would like to as well thank the Department and certainly you, Yvette, for your invitation to be able to be here today. So, of course, BMI supports publishers' right to make its own deals directly with music users; they've been doing so for decades. I think we all know it's been somewhat successful, although maybe not as successful as one might hope in the digital space.

I think David's company in particular and his company is not alone, but I'll mention them because they're on this panel, has licensed some of the super large companies that we've been talking about today. Apple, Amazon, Facebook, Google, Snapchat, so these are most of the important digital companies out there and I know there was a big announcement recently about TikTok and there were already existing major publishers' agreements with TikTok.

And so, these direct licenses are happening in the marketplace. They may not be ideal right now, I'm not part of those negotiations, but they're happening. And they're happening while there's a consent decree, while there's a rate court, there were direct licenses with Pandora and these go back years.

David talked about the limitations of the withdrawal, but I will say that direct licensing has been robust for decades. Janet, I know you could talk to the success that television stations have had over the years as well, negotiating with David's company for hundreds of television shows in any given quarter that have direct licenses with his publishing company across numerous different catalogs.

And so, we're not saying that we don't want publishers to be able to directly license this, of course we want that, but as we talk about the future, as we look ahead and we say, do we want to risk everything? Do we want to risk the robustness of this industry for a short-term fix that might end up being a long-term disaster? And we feel that the best way to do this is not to push people to the brink of lobbying for compulsory licensing. That's not going to help anyone. Mike spoke about it earlier. It will depress prices and we will we'll regret it certainly. So, we'll talk more about direct licensing as we move forward, but I just wanted to respond that way.

YVETTE TARLOV: Thank you, Janet, did you have something to add?

JANET MCHUGH: I do actually, because this is very impactful for the TV industry and Mike, you said it correctly, direct licenses are viable alternatives to the blanket licenses under the decrees, in many cases for the TV industry.

Basically, the blanket license has limitations. If TV stations purchase or license their music and the performance rights to that music directly from composers, which we do, they would be paying twice for that music. Once under the blanket license and once for direct payment to the composer. It's like buying the motorcycle car and boat insurance policy, when you don't own a boat or a motorcycle, and then having to buy a separate policy for your car. They are viable alternatives. We're working under them as Mike said, very robustly right now with ASCAP, BMI, and SESAC.

So when the PROs, as under the consent decrees, are prohibited from limiting, restricting, or interfering with the composer's or publisher's ability to enter into licensing transactions as is currently under the decrees, and when those alternative licenses are economically viable, we're going to talk later about genuine choice, and when the stations have control over the music they perform, and that's pretty much in local programming, when all of these conditions are met, local stations can and do enter into direct licenses under competitive conditions for a portion of the music they perform.

The per-program, for example, licensing and we'll talk about that later, eliminates this double payment problem we have for the same music rights. And I can also say, as Mike alluded to, this isn't just a theory, the 500-plus stations that currently take the ASCAP and BMI per-program licenses are, as a result of the non-exclusivity and other related provisions of the decrees, able to secure the rights they need to perform all of the music in their locally produced programs in actual competitive market conditions.

YVETTE TARLOV: Thanks, Ted, did you have something you wanted to add there?

TED COHEN: I muted for a moment. Actually, I think David wanted to respond first and then I'll jump in if that's okay.

YVETTE TARLOV: Sure, David.

DAVID KOKAKIS: Yeah, I'm happy to do that. We have to have a real conversation here about what the objective is. Is the objective to suppress rates and put efficiencies over the rights of the creators? If that's the objective, then yes, direct licensing is viable as it currently exists. But I don't think that's what we're talking about.

We want to compete in a free market. We want the right to choose how, when, and the terms upon which the content that we represent in the songs that creators create are utilized by only big tech companies who don't need the DOJ's protection. So, it may be viable as it currently exists in general licensing, in broadcast TV, cable, film, radio, we're not talking about that when we discuss selective withdrawals. So, we have to really hone in on what the subject matter is because I feel like we're all over the place when we talk about everything around what the direct point of this is.

And it's not a foregone conclusion that there'll be a legislative fix because there's nothing broken when you talk about empowering songwriters and composers and creators and publishers to engage us directly, to achieve fair market value in direct negotiations with the largest tech companies in the world. I don't know why that's so terrifying. And the fearmongering about government

intervention and the doomsday scenarios. I don't think anybody's buying that anymore. It doesn't ring true. It's a bit of a disingenuous approach to take. Thank you.

TED COHEN: Okay, so this has been this so far has been a wonderful experience and it's great to be here and I want to thank Mr. Delrahim, Makan, and Yvette and everybody. When I volunteered to participate in this, I started getting messages from people, what's your involvement? What is your agenda? What is your position on this?

And for those of you who know me, I've spent the last 25 years working on the evolution of the digital ecosystem. I'm usually a moderator at most of these kinds of sessions at tech conferences and music conferences. I try and build consensus so I've expressed that I'm a centrist in all this.

We need to move things forward, we need to move things, if it's about efficiency, that's great, but not at the expense of compensation. So, I'll explain what I'm about and why I'm here and some of my thoughts. I'm about innovation that leads to maximizing compensation for everybody involved. I'd rather negotiate than litigate. I fought stagnation from all sides of the table. I mean, of everyone that's here, I'm probably the most conflicted. I mean, I worked for the illegal Napster on a Friday in May in 2000 and on Saturday I was working for EMI Music. So, I've been on every side of the issue.

I can argue passionately everybody's viewpoint, but the reality is we have a lot of creative creators, songwriters, musicians, composers, performers that need to get properly compensated. And my goal today in this conversation is to make sure that we don't want to have again, streamline this at the expense of fair market value. So, my agenda is cooperation of acceleration, with minimal legislation.

So, if everybody can have an open discussion, I know we all have a viewpoint and we all have our constituencies, but at the end of the day, isn't it really great to click on your phone and hear the song that you've wanted to hear from high school without digging through a stack of records in the garage that your mother put in a box? The availability to have that immediate emotional response is made possible by the deals that David does and the deals that Mike does, everybody that's been involved here. And I think we have to move from a we'll never do this to, of course we can, we just have to figure out the construct. So, I'm hoping that out of these two days, there is a sense of moving things forward, as opposed to let's have all these discussions and leave things where they are, thank you.

YVETTE TARLOV: Thank you, Ted.

MIKE STEINBERG: Yvette, do you mind if I just add one thing? It's Mike.

YVETTE TARLOV: Of course, go ahead.

MIKE STEINBERG: I just want to make sure that we all heard what Mike O'Neill said earlier, and Beth echoed as well, that we want to compete in a free market. And it's just a matter of timing and how we get there and so the suggestion that there is some view on BMI's part that we don't want to compete in the free market is ridiculous and I would say if the hubris of someone thinks

that you can just move the needle overnight and completely change something, we would submit, is an unrealistic way to approach this having had very, very detailed conversations with the stakeholders, and there are many stakeholders here. It's not just music publishers and PROs.

TED COHEN: Yvette, if I could just respond to that for one moment, I totally support what you're saying. I mean, when the whole Napster thing started in '99, 2000, I gave a talk on CNN with a bunch of people and there was an artist there and he said, "Oh, I want everybody to have my music for free." And I happened to call them after the session and I said, "Why would you want your music for free? Are you giving up your advance from your record label?" "No, I love my advance from my record label, I just want my fans to love me." So, I mean, we've always been in this awkward thing of everyone loves music and yet it's undervalued. And I think whatever we can do here to maintain and even increase the value of music to the end user is in all our benefit.

YVETTE TARLOV: Okay, let's move on to our next question so we will be able to cover them all. I think you alluded to it earlier, Janet, and David as well, another of the core fours is alternatives to blanket licensing. The current decrees require ASCAP and BMI to provide alternatives to blanket licensing, such as adjustable fee to blanket licensing, per-program or per-segment licenses. Mike, are those alternative licenses, viable alternatives to blanket licenses today, and why or why not?

MIKE STEINBERG: So, they are, but before we get to them, I just want to make sure everyone understands simply because this panel is called licensing alternatives, it should not be taken by anyone to mean that the blanket license, where this all started, is somehow less desirable. In fact, if you look at the hundreds of thousands of BMI licensees, the vast majority are very, very happy with the blanket license. It's effective, it's simple, and the price is right.

So, we acknowledge though that is not the case with everyone and so over time, there has been an evolution of licensing alternatives. Not as many as we would have liked, we can get to that in a second, but certainly the per-program license in local television and radio has been a viable option. If you look at the history of the stations that are on the per-program license since the '90s, when it all started, it's been a steady increase up to nearly half the number of local TV stations in the country.

You look at the license fees over that same time period, and they've steadily decreased to the benefit of the local TV industry. I think that Jack in his wildest dreams never imagined it would be as successful as it has been what he created back in the day. And so, I would say the TV, if you look at the numbers, the TV industry should be pretty happy looking over the time period.

The AFBL, Adjustable Fee Blanket License, is something that's newer. It has been less of a success on the BMI licensee side. We don't necessarily know why we negotiated that with the committee, but it credits stations for precisely what we would have distributed to our affiliates if we were not carving out, so to speak, from the license. And I'm sure Janet will have more to say on that, but we do think they're viable options. They've been going for quite a long time.

YVETTE TARLOV: I mean, let me ask you this: in its public comments, ASCAP stated that since its decree was amended in 2001, that no users ever sought a per-segment license, and that they

were advocating eliminating per-segment licenses. Two questions: one, has anyone used a BMI per-segment license, and, two, what is BMI's position on that?

MIKE STEINBERG: I don't know that our consent decree actually has a reference to per-segment, I may be wrong about that, but I think, over time, there have been, I know, attempts to discuss programming periods in a way that are not part of the current per-program structure. So, I think that would be a question better asked of ASCAP, I don't know.

YVETTE TARLOV: But my question was what is BMI advocating? Does BMI want to continue with having a per-segment license?

MIKE STEINBERG: I think what we've said is that we would continue with what the existing alternatives are in the current framework for the time period, during this transition period.

YVETTE TARLOV: Janet, you mentioned earlier genuine choice. the decrees also require ASCAP and BMI to provide a genuine choice between licensing alternatives. What does it mean TO have a genuine choice and is that provision operating effectively today?

JANET MCHUGH: Okay, it's a little difficult for me to talk about genuine choice without talking about, following up on what Mike said, that the per-program license is viable, it's robust, and I think the most important part of the per-program license is that it's allowed stations and rights holders to negotiate license fees and terms under competitive market conditions, cumulatively resulting in the payment of millions of dollars in license fees directly to composers and publishers all outside of the blanket license process.

You know, we've had a lot of folks talk about the companies that are out there, the songwriters that don't do as well as others. And we represent, for example, 125 religious TV stations, we represent W-I-N-K, WINK in Fort Myers, Florida, family companies, WBRZ-TV in Baton Rouge, Louisiana. So, when we look at whether a per-program license is viable and what it means to the bottom line of these very small companies, it has impact.

But also, we shouldn't forget all of those composers, who through the per-program license, are paid directly. And so that whether it's BMI, ASCAP, or SESAC, direct licensing and the per-program option gets money into composer's pockets directly. Now they may not be composers that you've heard of, but they write songs too and it's important that we keep them in mind as well.

Now, I didn't mean to go off script here, but I will just say this, I haven't really seen the "skinny decrees." I haven't seen them, they hadn't been shared with me, so I don't know what's in them and what's not in them, but I will just say this quickly: genuine choice is an absolutely critical element of the consent decrees. There are things that are just working very, very well and let me just tell you what it means. It means that the licensee has an actual choice between the license types offered.

So, for a per -rogram license, ASCAP could insist, I'm using them as an example, ASCAP could insist on a per-program formula that makes the license sort of a technical option, but not an economically viable option. The genuine choice provision says if you're going to offer alternatives,

offer ones that actually reduce the station's payments under the blanket license fees because they're already paying composers directly. So, give folks a genuine choice and currently, the ASCAP per-program licenses are actually doing that.

We have a whole history here. In the past, before an antitrust suit was brought, SESAC was offering a per-program option that nobody could take. Why? Because they didn't save any money, no matter how much direct licensing they did, no matter how many composers they paid for performance rights. And so, therefore, we had to bring a lawsuit and we don't relish that. We don't think, going back to what Ted said, we don't really think lawsuits are the answer to a lot of things, but sometimes they are necessary evils. Once SESAC came back, with a genuine choice, with a per-program license that was viable, now, as Mike alluded to, we have over 500 stations, at least right now, that are taking the ASCAP and BMI per-program options.

So, we're paying under these license options, rights holders directly, and it's critical. It's critical to the stations, particularly those owned by small stations, families, individuals but it's also critical to the composers like Frank Gary, or Steven Arnold, folks that don't have a big name, but who actually write music for local TV.

YVETTE TARLOV: Thanks. I know Mike and David, you both mentioned AFBLs, or Adjustable Fee Blanket Licenses, Mike, I think you both also have alleged to the fact that they're not working as well under the current decrees as they could. Can you address that and go ahead, Mike, and then David could address that as well?

MIKE STEINBERG: I think what this goes back to is something specifically that Mike O'Neill was speaking about before, and that's the ability to innovate and to try new things and experiment. And the decree, as it's currently written, restricts what we're able to do. So, for example, we have a new claims-based license that we have been offering in the digital space, and it's something that I'm willing to bet we would have tried a lot sooner, but for our need to make sure that we weren't going to have to live with something for years and years that didn't work for everyone. And so, we were much more careful and measured about how we went about negotiating that.

I think one of the things that has become, we'll call it a handcuff around what we're able to do in terms of experimentation, is, for example, if we were to agree with a music user that we would provide some sort of discount, if they were to ask us, "Can we just take a BMI license? We don't really want any other license, we're willing to pay you more, but pay you less than we would have paid everyone. Is that something that we could do?" No, we can't.

And so those types of things that may have been written to create a time when people realized or thought that they were restricting something, in terms of value, I think is completely stifling innovation. It's preventing things from being experimented with, it's making BMI be so cautious as to really kind of only in rare circumstances, introduce anything new. And plus, we could find ourselves in this situation, which we have, in which we want to create something new, but we've got tens of thousands of businesses licensed under a structure that may not make sense anymore. What do we have to do? We have to license the entirety of the category over again, which is a Herculean task, is extremely costly, and inefficient. So, we're looking to make that change.

YVETTE TARLOV: You mentioned the claims-based license. Can you just explain what you mean by that and why you couldn't, or felt like you couldn't, offer that sooner under the decrees?

MIKE STEINBERG: So, I'll take the second part first. We could have offered it sooner, but it would be something that if we offered it and it wasn't necessarily workable, we might have to have it out there for years to come, because others would say, I want an MFN versus what you gave effectively to that particular music user.

YVETTE TARLOV: You're referring to similarly situated?

MIKE STEINBERG: Right, exactly, because of the similarly situated restriction. The claims-based license in its simplest explanation is paying for what you use, looking at the total performances that occur in a particular service and looking at your share of those performances that you represent, whether as a publisher or as a PRO, and using that ratio to calculate what an appropriate fee should be based on a rate agreed to.

YVETTE TARLOV: Are there any examples of licenses that you feel you have been blocked from offering, or is it more that you just don't offer for them, because you would have to offer them to an entire class of users?

MIKE STEINBERG: I think the example I gave of sort of a BMI-only license, discounted for volume use. I mean, I don't see anything more procompetitive than entities competing to have their product used more. That to me suggests certainly a procompetitive use.

YVETTE TARLOV: David, Ted, either of you have any follow ups that you'd like to ask?

TED COHEN: Again, it's about evolution it's about evolving what we're doing and things that aren't working we should take a look at adjusting. But having negotiated across the table from David at Universal, I can tell you, it's not as onerous as it might seem. I mean, there seems to be a push-pull in terms of who's controlling everything. Everybody, I think that's here, at least in this session, on what David Israelite had to say, I think we all have a common goal of getting creators paid reasonably for what they, in some cases paid more reasonably than they ever have before.

So, I don't think that there's any evil behind the curtain, no matter which way this discussion goes. But again, eventually we have to have this balance of streamlining the process by maximizing return for the people who literally are, as Michelle said earlier, she's in Valley Village, down the street from me here in Los Angeles. She lives and dines over the income that she gets from her songs. And we have to recognize that they're the party here that is the most vulnerable and we have to protect them.

DAVID KOKAKIS: Ted, thank you for that. I'm sorry… Ted, thank you for the compliment, but you'll ruin my reputation if people think I'm easy going so...

TED COHEN: Well, I'm impressed at John Oliver's letting you use his current TV studio, I mean, that's life.

DAVID KOKAKIS: So, I will address the one question that was posed to me about Adjustable Fee Blankets. I've received repeated complaints from licensees who have wanted to license from Universal Publishing directly, who weren't able to do so because the societies did not clearly define what the methodology for offset and reduction would be. And that led to the licensees potentially overpaying or double paying.

The societies had been taking the position, irrespective of what Universal's market share represents, the society should receive more than what that offset would call for because they've aggregated more competitors more, more rights, and there's an additional value or minimum value attributable to that. And that frustrates direct licensing. And what we've had in each of those instances is the licensees saying "You know what? We would have taken this license from you directly, thank you, but we're not going to because it's been too difficult to deal with the societies in closing the AFBL."

YVETTE TARLOV: Thank you, well, let's move on, so Jackie can have a chance to answer a question. Content creators generally negotiate with music publishers and songwriters at the time they sync the music with the video. This is known as source licensing. Because content creators can substitute one song for another, the markets for sync rights, arguably, is competitive. Although sync rights are licensed at the source, public performance rights, with the exception of theaters, historically have not been. David, can you elaborate as to why you think that is?

DAVID KOKAKIS: Well, when we're talking about issuing one-off synchronization licenses, we're very clear about the scope of the project, the specific use of the music and incorporation with the audio-visual work. And to some extent, in some instances where that specific piece of work will travel, meaning the territory for exploitation, the length of time that the audio-visual work will be made available, the other terms that would be disclosed to us at the time of licensing, when you're talking about licensing on a blanket basis for projects that have not yet been conceived of, it becomes very difficult to price.

So, we typically leave that responsibility in the hands of the societies and we typically look to the platforms that exploit those works to take those licenses as opposed to giving that license at source. So, that's the way it plays out in practice. It just doesn't seem like a viable option to do those types of deals on a direct basis. Whereas again, with individual one-offs, it's a bit easier when the scope of exploitation and specific use is a little more clear.

YVETTE TARLOV: As a result of several court cases, the ASCAP decree with modified in 1950 to require producers to procure the performance rights to downstream theater exhibitors, the so-called "Movie Theater Exemption." The BMI decree does not contain this exemption, although BMI has followed it in practice. Jackie, should the current decrees be modified to eliminate or expand the theater exception?

JACKIE BRENNEMAN: Thank you, Yvette, and, of course, thank you to Makan Delrahim and the whole Department for having me here to speak on behalf of movie theater owners. I do want to start by explaining why NATO is here in the first place.

It might seem strange that movie theaters are included in a discussion on blanket performance rights licenses. After all a blanket license serves a very unique problem. Businesses want to be able to negotiate and to program music flexibly and artists need compensation for these performances. Individual negotiations in those circumstances would be impossible, as would constant auditing and enforcement. But of course, many movie theaters do take on blanket licenses, as any other business would, for the music played in their bars, lobbies and other common areas.

But the question that you raised, of course, relates specifically to the cases underlying the initial music licensing consent decrees. And those cases stem from the impact of the evolution of technology on music and movies. So, while movie theaters do not currently need the flexibility and variety from music in their auditoriums, as David alluded to; those titles are done for a specific scope with a specific intention for exploitation. They absolutely did need those kinds of licenses during the silent film era. So, in those days, a live musician would actually accompany the movies with songs they could independently select. Therefore, movie theaters needed blanket licenses to allow for those performances.

However, once sound was introduced into movies, theaters no longer had any control over the choice of songs, but ASCAP, which was then the largest PRO by far, denied its members the right to license performance rights with film producers at the source. So, as a result, movie theaters were then forced into performance licenses in order to play movies that they already licensed. So, as you might guess, ASCAP took advantage of this uneven power dynamic to increase the price of blanket licenses issued to theaters by upwards of 1500%. That anticompetitive practice led to the Alden-Rochelle and Witmark lawsuits you were referring to. After the movie theaters were successful in their claims, licensing performance rights for theatrical exhibition in the United States was included in the same transaction with song producers as the negotiation for synchronization rights, because, of course, that was the purpose of the music, it was for that type of exploitation.

And this makes sense, movie theaters have no control over the song selection and would have no way of assigning appropriate value to an individual author. Producers, on the other hand, are aware of their budgets and can work with artists to determine an appropriate market value. These negotiations allow for flexibility, even profit-sharing for established artists. In other words, these negotiations permit innovation and profit-sharing agreements. New artists, on the other hand, can offer more affordable rates in exchange for the reputational boost from appearing in a feature film. Negotiating for the song within the context of its intended use and its importance to the film and scene in which it appears ensures that the songwriter is compensated for the true value of the song, rather than by subjecting it to a separate process where the value is based simply on the fact that the song is played.

Make no mistake though, movie theaters absolutely still pay for the music included in films, but these costs are simply passed on to theater owners through the fees that they pay to license films for theatrical exhibition. So, what is referred to as this “Movie Theater Exemption,” it’s really not an exemption at all, it’s an affirmation of the obvious fact that blanket licenses are not appropriate for music already licensed for movies intended to be shown in movie theaters in the post silent film era. This is not in any way about preventing innovation; it is about ensuring that a blanket license does not apply where actual negotiations can exist.

It makes no logical, economic, or competitive sense to require a blanket license where one is not necessary. The Supreme Court has been clear that blanket licenses are "substantial deviations from the competitive norm." But they're allowed because they solve a unique problem and because of the safeguards of the decrees. The unique problem that they solve simply does not exist for music in movies shown in movie theaters, as those rights are preselected by the producer. So, in those cases, flexibility and an inability to directly negotiate are not relevant.

The core holdings of Alden-Rochelle are just as relevant today and should be upheld and applied to all PROs as they are in practice today because the license happens at the source. Movie theater simply should not require a separate blanket license from music in theatrical movies, period. I do want to add that we are all operating during an unprecedented global pandemic, but it's devastated businesses and individuals across the globe. Almost no industry has been impacted more than movie theaters, which has had revenues dropped by over 97% this year. To undertake a review process for the so-called "Movie Theater Exemption," illegal precedent, which has been upheld over and over again, is simply inappropriate and untimely at this time. Thank you.

YVETTE TARLOV: Thank you. So, Mike, Jackie has explained the exemption, blanket licenses are not necessary when music is licensed at the source. Why does that same logic not to other forms of distribution? Like when a movie that is in a theater is distributed over cable television or television public performance.

MIKE STEINBERG: The Alden-Rochelle case was specifically about movie theaters and the industry has been operating that way for the last 60 years. I think your original question to Jackie was, should this be part of a consent decree? And the answer to that is no; the industry is operating fine and has been operating fine for 60 to 70 years. In fact, in the theater owners' submission to the DOJ, they said the general provision in the BMI consent decree requiring BMI to engage in non-exclusive licensing, which will remain plus the industry practice that is built up around source licensing of theatrical performance rights have achieved the same results as the ASCAP consent decree provisions. So, you don't need to add it to BMI's and by saying that you actually don't need it to be in the ASCAP consent decree because it is the Supreme Court law of the land, and everyone's been following it all the way down the chain.

YVETTE TARLOV: But that wasn't that…

JACKIE BRENNEMAN: I do agree with Mike on that principle broadly and you're right, that there's case law that absolutely enshrines this and protects us. We do just want to express concern that absent the consent decrees and the explicit protection, we saw what happened. So, especially at a time like this, when there is just unprecedented losses, to upend that and to expose our industry to some sort of vulnerability that is unnecessary and, as you and I both agree, is unprecedented by the laws, the laws do not support that kind of change, would be terrible. So, whether or not it's continuing the exact provision, whether it's expanding it, whether it's affirming that the holdings of Alden-Rochelle apply the same today, that's fine, but what we do not want is to somehow end direct negotiations where they are absolutely appropriate.

YVETTE TARLOV: Thanks, Jackie, Mike, I just wanted to get back to, the question was whether it should be eliminated or expanded and my question to you is what is the logic behind not expanding the theater exemption to a broader class of distributors, including television, cable television, the digital streaming services like Netflix?

JANET MCHUGH: We would certainly support it. That's a great question-

MIKE STEINBERG: So, are you suggesting that we eliminate the Public Performance Rights from all media? Because I don't think that that would such a good idea.

YVETTE TARLOV: No, my question just is why is…

MIKE STEINBERG: Well, so have it flow differently and I think that question has been one I've asked over the years, I think David touched on it a bit in referencing the scope of the license and having to figure that out at the outset. But there are ways around that. You can add to existing licenses to include more territories and I don't know that it's been attempted. I've asked that question for years. I don't know why we complain about all the music being in the can and we don't fix what's in the can. Maybe Janet can speak to that.

YVETTE TARLOV: Well, let's talk to the through-to-the-audience license. The 1950 amendments to the ASCAP decree clarify that through-to-the-audience provision covered broadcasters in addition to radio. In 2001, that through-to-the-audience license was expanded to cover online users, as well as any yet-to-be-developed technology. Again, the BMI decree doesn't contain those provisions, but BMI has granted through-to-the-audience licenses. So, Janet, should the decrees be modified to eliminate or expand through-to-the-audience licenses?

JANET MCHUGH: We're not really aware of any basis for eliminating the through-to-the-audience provisions. We have some very serious concern about the elimination of those license requirements for the following reasons. The big three networks, ABC, CBS, and NBC, secure through-to-the-audience licenses for their network programming and thereby cover a portion of local station programming. Local stations do not have to secure a license for that network programming.

So, for example, King 5 in Seattle, who's an NBC affiliate, does a lot of local programming, does an evening magazine show does a lot of news, or WABC in New York City, or WUSA in Washington, DC. They only require performance licenses for a portion of the broadcast day, that portion that is local. Without the through to audience provisions, ASCAP and BMI might attempt to secure license fees from both the networks and the stations. That's our major concern here. In multiple stages of the distribution chain, how many rungs in that chain are going to have to pay license fees?

Also, we have another issue in that local stations, large and small, now provide their local news programming to Internet streaming services. And without the through-to-the-audience requirements of a consent decrees, ASCAP and BMI could attempt to secure license fees from every entity in the distribution chain, likely increasing the overall royalties, but there's no real change in the actual use of the music. The music stays the same for the same purpose. It's just that

there's additional dissemination from the networks to the stations, et cetera, but it's the same programming in the same music.

YVETTE TARLOV: Go ahead Janet.

JANET MCHUGH: Maybe I probably don't need to repeat myself. We would not be in favor of eliminating that provision.

YVETTE TARLOV: Mike, what is BMI's position? Are through-to-the-audience licenses contemplated by the core four approach?

MIKE STEINBERG: When you look at our consent decree, we do not have the through-to-the-audience language that ASCAP has. We do have language that requires the broadcast network model to succeed as Janet laid out. I've been in charge of licensing for a long time and when I look back at requests, I think back to requests that we've had for any kind of through-to-the-audience license, through-to-the-viewer license, despite not having that same language as ASCAP has in their consent decree, we've never said that we're not going to provide that type of license. To the extent that there is a transmission and the chain of transmission, it makes sense, and I look at the way that's defined and I say that that's the way we've operated. So, I don't see any reason to have to change that.

YVETTE TARLOV: So, what is being proposed as a replacement or a modified decree, would BMI contemplate having a provision a through-to-the-audience licensing provision in that modified decree?

MIKE STEINBERG: No, no, we don't see any reason to add it to the decree, in the same way we wouldn't see adding Alden-Rochelle exemption provision to the decree to be of any value. This is how we've been operating for years and there's no reason that would change.

YVETTE TARLOV: You've been operating that way because ASCAP has been under those provisions, correct?

MIKE STEINBERG: We haven't been operating that way because ASCAP is operating that way. We've been operating that way because that's how the marketplace has evolved. And it may be the case that the language is in the ASCAP decree, but it doesn't need to be because this is how everything has been working for decades.

YVETTE TARLOV: Earlier, I think, or at least in all the comments or a lot of the public comments we received, several people mentioned or raised concerns about the level of transparency in the current ASCAP and BMI databases. Janet, are the current databases sufficient, from a user perspective? What is missing today, if anything, both in terms of content and functionality?

JANET MCHUGH: Well thank you for letting me talk about this. Absolutely a critical issue, important for all of us, not just for users, for everybody involved in this process. The more transparency, the better. The lack of a public, universal, complete, real-time accessible database is a major stumbling block to a more efficient and competitive marketplace. We would fully support

modifying the consent decrees to require more robust disclosure. And let's bring everybody into this database. Let's bring every PRO, let's bring SESAC, let's bring GMR data. We want all data. We want the best data we can get. We want to know who to pay and so it's critical.

It's hard to understand in this day and age, why we don't have that, why we don't have a database that connects sound recordings to musical works and to musical works rights holders, along with their PRO affiliations. Composers and publishers change PRO affiliations. We need real-time information. Also, we should have a database that has cue sheets in it. ASCAP and BMI have massive, massive cue sheets and we would like a cue sheet database.

So what else is missing to your specific question? Well, the current ASCAP and BMI database doesn't include all fractional interests. First of all, ASCAP and BMI are independent entities and our understanding is that because they're independent with independent databases, there's no sort of joint reconciliation of information inconsistencies between their databases.

For completeness, any database should contain data from all the PROs, SESAC and GMR. And, just I'll end very quickly on this, just to say, there is simply no universal agreement on who controls what. We go into negotiations with PROs and ASCAP as they have the biggest share and BMI says they have the biggest share and SESAC says "Yes, we're growing. We may be bigger than ASCAP." And we don't know, but if we had a database with cue sheets in it and totally transparent, accessible in real time, we would know. We'd be able to figure that out; big data's here and we're behind. So, we're still waiting for that. We would do whatever it took to assist in creating that and, so far, it hasn't materialized.

YVETTE TARLOV: Mike, do you want to respond to that?

MIKE STEINBERG: Yes, I will respond to that, thank you. So, we have been providing data on our website, as ASCAP has for years, and before that in book form and CD-ROM form, and that's despite not having a necessarily the requirements to do all of that. And as it happens, I think Janet probably knows that BMI and ASCAP are working currently on THE reconciliation of the data that she is concerned is not reconciled. And we're working on that and…

YVETTE TARLOV: Is that the Songview database?

MIKE STEINBERG: Yes, that's the Songview database and we hope to have that done this year. It is a lot of work that goes into that, as you can imagine, given the vast volume. But I will talk to one other thing that Janet mentioned and that's cue sheets, and people should understand that BMI doesn't create these cue sheets, program producers create these cue sheets. In fact, Janet's TV stations, to the extent that they create programs, create cue sheets also. So, they create more cue sheets than we do, we do collect them from program producers, but there's a cost that's involved with that, and the answer isn't simply for BMI to make all of the cue sheets that we have collected over the years and spent money doing available on a database. Janet works with a company that, or her TV stations work with a company and she does as well, that has access to cue sheets and as far as I understand, as the provider of cue sheets to TV stations, they charge them for every single one of them. So why should we do it for free?

YVETTE TARLOV: Ted, I know you and David also both have positions on this issue. Do you want to…

TED COHEN: Well, one thing everyone should understand is that publishing rights move much faster than recorded master rights do. I mean, usually if an artist is signed to a label is you have to label and the label doesn't change ownership too often, but musical compositions publishing catalogs move at the speed of light sometimes. So, it's really important that this database, I mean, I agree with a lot of what Janet said in that we need the transparency, we need the immediacy because there are a lot of people who end up unintentional bad actors. They really aren't bad actors, they literally end up paying the wrong person because the databases aren't up-to-date. The other thing is, and Mike touched on in it, is who owns the database and how was it funded? Because a lot of people have said, "I'm going to build the library at Alexandria, we're going to build the global library of rights, but here's what it's going to cost you to access it." So, I think it's something that has to be, again, evolved really quickly and be useful, but it can't be with yet another gatekeeper blocking access to it. So, transparency and a really fluid way of interacting with it is critical for all this to go forward.

YVETTE TARLOV: David, do you have something you want to add?

DAVID KOKAKIS: Sure. Well, transparency is achievable if it's a real goal, as opposed to a buzzword that's been used to appear forward-thinking and progressive. So, it's really about who's walking the walk and we don't see very much of that in the marketplace this day. The societies have been talking for years about a centralized repository for data as amongst a few of those societies. I agree with some of the comments made that it should include all rights holders and all rights types. So, there's a single point of entry to find out about who owns what and in what shares, and to have visibility into when rights shift, which does happen quite often in the publishing industry.

So, to address this, at least in part, Universal Publishing in 2014, made publicly available our entire catalog showing ISWC, songwriter name, partial interests, society affiliation, it's not only searchable on a song by song basis, but also could be extracted as a full data dump into an Excel spreadsheet or other format to help get people past being precious about ownership information. Those days really need to be behind us and I think we need to work toward this common goal which would benefit licensors and licensees alike. The closest thing you see to that now is happening with the MLC, the mechanical licensing body that was born of the MMA and hopefully those efforts will go well. We're working hard to make that happen, but it's a limited fix. It needs to be done on a much broader scale.

And for those of us who recall there was a global repertoire database initiative over 10 years ago, out of Europe, which was derailed by the societies. I know that's a controversial comment, but I think anyone who's involved in that process knows that to be accurate. Now, the cost is a big concern. Who is going to pay for it? I think given that it really does serve the greater good, it's the type of thing that everybody licensors and licensees alike can contribute to. So, it's idealistic to some extent, but achievable, as I said, as long as we treat transparency as a real goal, as opposed to just something that looks good in a headline. Thank you.

MIKE STEINBERG: Yvette, can I just add one quick comment? I know we were talking about databases. I just want to make sure everyone understands that what BMI and ASCAP are working on is not necessarily a database per se, in the way that others may have been spoken, but more of a reconciliation engine that will provide data back to two separate places, but reconciled data that will be accurate. And there's one other thing that I wanted to mention. I think, as we talk about data and we talk about all getting smarter about who owns portions of what songs because, as Ted mentioned, things do change, the data exchange currently going on in the context of claim-based licensing, whether it's data dumps or otherwise reconciling data that's correct or incorrect, is going to make everyone a lot smarter going forward as to who owns what. It's not going to be perfect, but it's going to be a lot better.

YVETTE TARLOV: So, you mentioned earlier the database that you're working on, the Songview database is going to indicate what fraction of each of the songs is held by who, is that correct? Just maybe describe a little bit more about what Songview is, and when it is coming?

MIKE STEINBERG: Right, so I believe it will be by the end of this year, and I'm certainly not the expert on this. You might have more panelists in the coming 24 hours who could speak to this better, but I do understand it as letting a searcher know who are the participants necessarily, as it relates to BMI and ASCAP, and perhaps not the exact share. I don't know precisely how the interface looks because it's still in the works.

YVETTE TARLOV: Anyone else have any further comments they'd like to share?

DAVID KOKAKIS: I'll just say this if I may, one of the benefits of greater transparency in having data like this readily available is that it will be easier to facilitate direct licensing, which is, as you know, an objective of publishers. And, I think it serves the greater good in having this information out there, so you know who owns what, and it makes it a streamlined process to obtain licenses, as opposed to keeping publishers and creators in this all-in or all-out construct that was mandated by the rate courts.

YVETTE TARLOV: Thank you. I see Karina has appeared on our screen, which means we're nearing the end of our time. This has been a very informative debate, and I want to thank all of our panelists for their considerable contributions, so thank you.

PANELISTS: Thank you.

JANET MCHUGH: Thank you for the opportunity.

MIKE STEINBERG: Thank you everyone.

KARINA LUBELL: Great, thanks to Yvette and her panelists for a fantastic discussion. We'll now take a 10-minute break while we transition to our songwriter keynote, and we'll resume promptly at 3:15 p.m. Eastern Time, thank you.

Songwriter Keynote (Pharrell Williams)

KARINA LUBELL: Welcome back, everyone. Hopefully everyone's returned from their breaks and it's now my great honor to introduce Pharrell Williams, a visionary recording artist, producer, songwriter, philanthropist, fashion designer, and entrepreneur. He's been a creative force in the music industry, and beyond, for more than two decades, winning 13 Grammy Awards. And just this morning, he received his first-ever Emmy nomination. So, without further ado, Pharrell Williams.

PHARRELL WILLIAMS: Wow, thank you all and thanks for having me up here today. The honor is mine. I hope everyone is doing well out there and having a good day. This is an awesome thing that you all are doing, just thinking about songwriters in this way.

So, let me just begin by saying ladies and gentlemen, thank you, I hope you all are well. Thank you for putting in the hard work to think through these issues that are important to so many people. I am honored today to speak with you, and you should know that it's a privilege that's afforded to me, I suppose, as someone who has made a career out of songwriting.

While I am one of the few voices who get the chance to share a perspective here, know that I am not here today representing the accomplished songwriters out there, but rather the songwriters we have all yet to meet. I'm speaking today on their behalf, on behalf of the kid in his bedroom, making beats and the singer-songwriter, we can all imagine, alone on a stage playing for tips.

Today, I am making a case for their future. I was once just like them, and this meeting is actually very timely. As citizens of the United States and even beyond our borders, we find ourselves in a period of total reimagination. No one saw it coming like this, but it's time. The systems we've all grown up with are all subject to reimagination right now. When I say systems, I'm talking about any process or structure considered tried and true, or the way it's always been done. Anything considered established, anything considered unjust, any business process, policy, or protocol that could be better, more fair, or more equal has a spotlight on it right now. And, that's a good thing.

All are being reimagined with an eye toward doing the right thing for the people, right? This is our country, right? We, the people. And so, I'm asking that we take this opportunity to do the right thing for the next generations of songwriters as well. When I say that systems are being reimagined, I'm not always implying sweeping changes, nor am I suggesting that should be your goal. I'm suggesting that this group, this very powerful influential group simply considers the countless songwriters who cannot be here today. Once again, I'm here on their behalf.

I have a quick story about reimagination. So, this June, in the early stages of this new revolution for Black lives in America, I saw an opportunity to reimagine how my home state of Virginia observed the often-overlooked holiday of Juneteenth, where we celebrate the day the last of our enslaved brothers and sisters were finally, and humans I might add, were finally freed in America. So, I called the governor and I proposed to him that Virginia lead the way and recognize Juneteenth as an official paid holiday, paving the way for more states and eventually our nation.

And guess what? On a state level, it actually worked. The governor agreed and made it happen for Virginia and its people. I later tweeted at 49 other governors suggesting that they do the same. We enrolled corporations to observe the holiday, other big Fortune 500 companies and even small businesses. We made progress and you know what? We still have a lot of work to do, but let me be clear that none of this and none of that would have happened or ever have been possible for me without songwriting first. To be specific, I could not have done any of this without first having the chance to make a career out of songwriting. So, you see again, songwriting and the career being protected does way more than you think and I'm going to explain this to you.

Songwriting created the opportunity for a kid like me from Virginia Beach to ever get the attention of the governor of Virginia. The ability to call the governor is one thing. It's a small one, and just one of the reasons I feel the need to advocate for songwriting as a career today, a career. There are plenty of parents out there that would argue that the world needs more doctors, lawyers, and bankers, and no offense to the lawyers here today, I know you're out there, but let me briefly make the case for songwriters.

Songwriters are the empaths among us, providing the soundtrack to our emotional coming of age. Every last one of you, when you think about your memories, there is always a song connected to it and you will never forget it. If there was ever a time for an explosion of empathy, it's now. Just turn on the news, right? It's pulling at you, whether you're red or blue, I think we should focus on green in America first of all, but just look at the news, it's divisive. And songwriters show entire generations of us, what falling in love feels like. Think about the song that you fell in love to, go ahead. Think about the song you fell in love to; people are still falling in love to that song right now. Today, right now, people are making babies to that music right now.

And here's something that you might not know about me, I love science. I love science, but nobody has mastered time travel and teleportation like songwriters. Their songs can transport us to a precise time and place better than any technology so far. And by the way, while I'm on that word technology, Steve Jobs created the iPod and the iPhone, generating trillions of dollars in value and changing the world. I ask, what would that value be without the songs you play on those devices, right now?

The songs written by songwriters inspired the creation of the most popular tech products of all time. Songwriters have challenged us to be our best selves, to give peace a chance, to fight the power, to believe that we are the world, but still ask what's going on?

When we have felt fear, songwriters have taught us bravery, when dealing with sexuality, gender identity, and acceptance as well. When we felt hopeless, songwriters have changed and challenged us to look deep within, to understand our battles with depression, anxiety, and other mental health concerns as well. Songwriters have actually created new music prescribed as medicine to eliminate insomnia and even reduce elevated heart rates.

Songwriters, don't sick of that word, it's a good word, it's a really important one, have created songs that have awakened deep seated memories in the minds of people suffering from Alzheimer's and other types of dementia.

So, maybe you are more of a sports fan, right? Well, your favorite athlete became the best at what they do, training endlessly while listening to a song written by a songwriter. Ever been to Austin or Nashville, two of our country's fastest growing cities? Ask their mayors how important songwriters are to their city.

Of course, I could go on, but just know the creators of all of this music at one point contemplated whether or not writing a song was worth it. Thankfully for us, they decided that it was. There are a lot of noble professions out there and when I look outside, I see a need for the skills of songwriters just as much. It's super important because they're the greatest among us. They have always been willing to go where so few are willing to go and they have made us better for it.

You can spend two days talking about the business of music, but let's not forget, without songwriters, you guys and ladies and people and human beings, there is no business of music. Let me repeat that, without songwriters, there is no business of music.

Nurturing the beautiful, important act of songwriting ensuring the craft endures, because the craft is important, should be priority. If not, why are we all here? Why are we all here? Ask yourselves, how are we incentivizing the songwriter? Everyone needs to be incentivized, but most importantly, how are we protecting the future songwriters?

Your work in this workshop, your work should not include any changes that harm the future of songwriting, if anything, your amazing comprehensive work, and brilliance I might add, your efforts today are going to champion it, songwriting. And no pressure, but when you are evaluating the importance and the role of a songwriter know that the music business is just one piece.

How we treat our songwriters in this two-day workshop will impact how future generations will fall in love, how they will deal with depression, anxiety and loss, how they will treat others who are different from them, how even they invent their generations defining technological device, right?

In this time of reimagination, your efforts over these two days will reimagine more than you might have thought because your work impacts songwriters. So, thank you for your time today and think of us as just like anyone else that has a career. Our lives depend on it. Their lives depend on it. It's the right thing to do, right? We keep talking about us being America and us being for the people. Well, the people need songs to sing, and those are written by songwriters. Let's protect them too, thank you.

KARINA LUBELL: Thank you, Pharrell Williams, for taking time to join us for this workshop and for sharing such an important perspective in this discussion about music licensing. Assuming that the panelists are ready, we'll go right into the next session, Session 3 on "Competition Between PROs for Songwriters and Publishers," which will be moderated by my colleague Owen Kendler, who is the Chief of the Media, Entertainment, and Professional Services Section at the Antitrust Division. Please take it away, Owen.

Session 3: Competition Between PROs for Songwriters and Publishers

- *Danielle Aguirre, Executive Vice President and General Counsel, NMPA*
- *Jordan Bromley, Board Member, Music Artists Coalition*
- *Bart Herbison, Executive Director, Nashville Songwriters Association International*
- *Clara Kim, Executive Vice President and General Counsel, Business and Legal Affairs, ASCAP*
- *Jack Kugell, Board Member, SONA*
- *Moderator: Owen Kendler, Chief, Media, Entertainment, and Professional Services Section, Antitrust Division, U.S. Department of Justice*

OWEN KENDLER: Well, thank you everyone, thanks for joining us today. Obviously, the sessions today were being quite lively and that's great. This third session is going to be on a slightly different topic than the session that proceeded us this morning and the session that will occur tomorrow morning. So, today we have a great group of panelists and I'll let them introduce themselves individually once I provide kind of an overview of what we're up to.

Today, on this panel, we're going to discuss competition between the PROs to offer their services to songwriters, composers, and publishers; how the ASCAP and BMI decrees, that competition; and whether the membership provisions in the decrees, particularly the ASCAP decree, should be modified. Should they be changed in some way to protect, strengthen, or maybe let competition do what it may do?

Earlier, Michelle Lewis, in her opening comments, mentioned that it's important for songwriters to work with a PRO of their choice and we're going to discuss that choice during this panel and how the decrees affect that choice. So, in particular, there are a few components to that, but, in particular, the panelists will discuss and debate requirements to the decrees that, for example, require the PROs to accept all songwriters, not just turn them away; limits on how long it can make a writer or publisher stay as members of the PRO; and we'll also discuss how licenses affect and how the resignation process might affect the ability for songwriters to change PROs and work with the PRO of their choice.

So, I'll let people introduce themselves and we'll just go in order as the agenda laid out. So, I'll turn to Clara to introduce yourself, and then Danielle, Jordan, Bart, and Jack.

CLARA KIM: Hi, I'm Clara Kim, and I'm the Executive Vice President, General Counsel, and Head of Business for Legal Affairs for ASCAP. I want to thank you Owen and the Department for inviting me and the other panelists to participate in this conversation today, and thanks to Pharrell for such an inspirational keynote.

OWEN KENDLER: Thank you, Clara. Danielle.

DANIELLE AGUIRRE: Sorry, had to unmute. Hi everyone, Danielle Aguirre I'm the General Counsel and Executive Vice President at the National Music Publishers' Association. And I echo Clara in saying thank you to the Department of Justice for putting this very important workshop together. I'm really happy to be able to participate.

OWEN KENDLER: Jordan.

JORDAN BROMLEY: Okay, cool. Hey everybody, hope everyone's okay. My name is Jordan Bromley. I am on the Board of Directors for the Music Artists Coalition. We represent all facets of creators in the music business. I'm also the head of the Entertainment, Transactions, and Finance Group of Manatt, Phelps, and Phillips, so we represent hundreds of songwriters, from the first song to the biggest song. And amen to what Pharrell said, I'm glad I got to catch that, and thanks all and, Owen, thank you for all the work you've done on setting this up.

OWEN KENDLER: Cool. Bart, I see you on as well.

BART HERBISON: I'm Bart Harbison, Executive Director of the Nashville Songwriters Association International. So again, thank you Owen, thanks to General Delrahim, General Barr, this is very, very important in our ecosystem and you've been examining these issues for a long time and we're looking forward to continuing that process, so thanks for having us all.

OWEN KENDLER: And finally, Jack from SONA.

JACK KUGELL: Hey everybody, I'm Jack Kugell. I'm a songwriter and producer, and I'm also a board member and Co-Advocacy Chair for Songwriters of North America.

OWEN KENDLER: All right, well, that's our panel. So, to kick things off, I'll start with a question to Clara. So, we heard earlier today mention of the four core principles in the skinny decree proposal that ASCAP and BMI have put forth. Recent public documents, it seems they're silent on membership requirements. So maybe you can walk us through what the proposal is regarding membership provisions of the decrees and why any changes.

CLARA KIM: Sure, but if you don't mind, in the last panel discussion, Mike Steinberg was asked about Songview and said he wasn't the expert, and it was after requested that someone in the follow-up provide more information, and I've been asked to do that. So, what Songview will do is provide music users with an authoritative view of ownership shares in the vast majority of all music licenses in the United States, which is through ASCAP and BMI. The Songview technology will be integrated into the ASCAP and BMI databases to seamlessly display detailed, aggregated ownership data for more than 20 million musical works in our combined repertories, including a breakdown of shares by PRO and the information will be accessible on both sites. I also want to remind that currently, and since, I think it was, 2016, ASCAP and BMI have already included the percentage of licensable shares on their websites, as well as writer, publisher, or each of their nearly 20 million registrations, and the databases are searchable. So, that's all.

OWEN KENDLER: Sorry, but Mike mentioned that it's not quite a database, it's a reconciliation engine. What does that mean? What is the distinction?

CLARA KIM: ASCAP and BMI each have their own websites. They have different names and you can search who is registered to each PRO through that website. Songview is a separate technology that takes the data that's already displayed on each of the separate websites and

reconciles the data to identify where there may be a conflict. If ASCAP says that it has 50% of a song and BMI says it has 75% of that same song, it will be flagged as a conflict and then work will be done to reconcile who had the right data, who had the wrong data, what the source of the conflict was, and correct the information, and then make that viewable on each of the two websites. So, if you're looking from the perspective of wanting to know what songs are covered by the ASCAP license, you will be able to see what the ASCAP information is as well as what the reconciled information is.

OWEN KENDLER: Will this database have information on fractions and who else the user should go to, to obtain additional licenses needed to perform?

CLARA KIM: Yes, it will, but again, we think it will be highly correct, but the actual society that controls a composition or an artist, a songwriter, I'm sorry, and control shares may or may not be right, unless they actually participate in this endeavor.

OWEN KENDLER: And are users, publishers or anybody beta testing these databases to work with the societies?

CLARA KIM: At this point, it's not ready for beta testing outside of the organizations. It's being quality assured within the organizations. But, as part of the discovery and part of why this project has taken so long is that our respective product teams did conduct interviews with users to talk about the user interface and other functionality.

OWEN KENDLER: Well, I know this isn't quite the topic for this panel, but thank you, Clara, before we move on, does anybody else on the panel want to address the database issue? So, hearing none, Clara, do you want to walk us through how the membership provisions relate to the four core principles and why?

CLARA KIM: First, I want to make it clear that ASCAP and BMI are not asking for the immediate termination of the decrees. There seems to be some confusion about that. So, I want to make that clear and, that said, I'll give some background about what our proposal is.

We're proposing that the existing arcane and idiosyncratic decrees that exist be replaced with more modern decrees that have the same substance for both ASCAP and BMI. Right now, the different decrees contain a lot of differences that cause significant confusion for stakeholders. As you heard in the earlier panel, there's certain things that are in the ASCAP decree that are not in the BMI decree, things that have gotten integrated into the marketplace and nobody quite knows where that restriction and obligation came from. So, we think at a minimum, the decrees need to be harmonized.

Also, as the Assistant Attorney General said at the outset of the workshop, ASCAP and BMI didn't ask for this review of the consent decrees. It was the Department of Justice announcing that they would embark on a wide-ranging review of all the existing longstanding decrees and seek to get out of the business of regulating market players. And in that context, we heard strenuously from a licensee community that they would not agree to an immediate termination.

And, in an effort to build a consensus and set a path so that the entire industry can move towards a free market, we agreed on a proposal where we would agree to maintain four key protections that the licensees told us that they need to be able to continue to effectively license from ASCAP and BMI.

Our expectation is that this decree would be in place for a transitional period, a number of years, that probably the DOJ will decide since the PROs and the licensees are not likely to agree since we want it to be as short as possible, they want to be as long as possible, but, in any event, we'd expect it to be less than 10 years since that's the modern policy at DOJ for the maximum length of consent decrees. But the idea is that during the transitional period, all stakeholders will make the changes that are necessary so that the music licensing marketplace can operate effectively and robustly when the decrees are eventually terminated.

So, the four protections that Mike O'Neill talked about earlier. One, that the PROs would continue to take non-exclusive rights, allowing their members to license directly, freely; that all users could get licensed on requests. We would be preserving the rate court to resolve rate disputes, and we will preserve the alternative forms of licenses. And, by the way, the law that has been previously established that addresses those forms of licenses, including genuine choice, our proposal is that all of the other provisions, including the membership rules, will be removed and instead the forces of competition would govern.

OWEN KENDLER: So, why remove all the provisions for membership?

CLARA KIM: Because we think that they're no longer necessary. Whatever the original rationale was, no longer exists, and we have a profoundly different reality today with extreme competition with PROs, particularly among PROs, for soliciting and engaging new members. We believe that we will be more responsive to be able to address the needs of music creators and music users if we don't have our restrictions and we're able to what makes sense for the marketplace.

JACK KUGELL: I'm sorry to interrupt, can we check our phones and put them on silent? If it's a mistake, I apologize.

OWEN KENDLER: Danielle, did you want to respond to what Clara was saying?

DANIELLE AGUIRRE: Yeah, thanks Owen. I think it's a promising to hear Clara say that ASCAP and BMI support, kind of, Department of Justice getting out of the business of regulating free market players. NMPA and our music publisher members and songwriters could not agree more. But, I think that freedom from regulation has to begin with looking at the copyright owners and creators and modifying the decrees to permit them to have choice, in terms of withdrawing digital performance rights and negotiating licenses in a free market first.

And why am I raising, again, selective digital withdrawal on this panel? I think it's because, I would submit, before we consider changes to the consent decrees that alleviate regulation on ASCAP and BMI, we have to look at the fact that a market that would provide freedom from regulation to billion-dollar global digital companies and to large PRO collectives, but continue to

restrict the music publishers and songwriters that own the creative works, could not really be a properly functioning market.

When Clara speaks of modifying decrees to ensure core principles and less regulation over membership requirements, she means greater freedoms for ASCAP and BMI as corporate entities, right? Mike O'Neil and Beth and others today have said repeatedly that the timing isn't right to provide music publishers and songwriters with necessary freedom to make their own choices to selectively withdraw, but, respectfully, I think that's an easy argument to make when they're not your rights or your freedom to negotiate.

I think the PROs have submitted a modified decree that strips all regulations that are placed on them away, but we need to keep our eye on the ball and ensure that freedom from regulation begins with music publishers and creators that were never subject to antitrust enforcement to begin with. And I think we have to remember, as we go into this discussion today, that less regulation for ASCAP and BMI does not necessarily ensure the same markets freedom for their member publishers and writers, and doesn't necessarily make it easier to, for instance, move from one PRO to another, to transfer catalogs efficiently, to be more transparent about understanding things like licenses-in-effect.

I think the fact that the PROs are strongly pushing for modifications that result in less regulation for themselves, but that the decrees will focus on timely changes that allow greater market freedom for copyright owners, to me raises some serious questions. And so, I hope that we can continue to think about that as we go through our discussion today. And as David Israelite, the CEO of NMPA, said earlier today, while, if we can speak together for modifications to the consent decree that allow for freedom of music publishers and writers to withdraw and negotiate in a free market their own unregulated performance rights, at the same time that we discuss these types of modifications, then I think we can be supportive of what ASCAP and BMI are proposing, but until that time, I think it would be hard to support that.

OWEN KENDLER: Jordan, I see you raised your hand. Did you want to jump in here?

JORDAN BROMLEY: Well, I don't want to… I think Bart's next. I'll go after Bart.

OWEN KENDLER: Okay, Bart?

BART HERBISON: Well, we generally support the four-point plan, I know there's many questions today where I'll get more specific on it and I'll accrue to Jordan here because a lot of what I want to say, I think is on the next question you're going to ask.

OWEN KENDLER: Jordan.

JORDAN BROMLEY: Yeah, sure, I would love to add a couple of pillars to the four pillars, at least one or two that relate directly to songwriters. I understand that by stripping the decrees of all membership obligations, and ostensibly rights, that will affect songwriters. So, I just kind of want to start, my first comment is we like the system as it is. I don't think we really need it to change. it's going well. The collections are higher than ever. It's a working ecosystem and anything that's

working right now in today's economy and world is something we should cherish because I've got a lot of members and a lot of clients who are really struggling; and their writer's share is their legacy, it's their annuity, it's what they give to their children, it's what they can rely upon. And any tinkering of that, any diminution or delay of their receipt of that is very scary. So, that's all I'll say for now, and I'll chime in on other questions.

OWEN KENDLER: The decrees, in part, require, as I mentioned earlier, the PROs, or ASCAP and BMI at least, to take all songwriters. So, Jordan, since you're on, maybe you could talk about why that's important, why is it important to the PROs to accept songwriters?

JORDAN BROMLEY: Absolutely…

OWEN KENDLER: And should it continue?

JORDAN BROMLEY: Yeah, sure, happy to. So, I have the unique experience of also having been a manager of young writers in my days before a lawyer and both ASCAP and BMI were instrumental in the early days of a writer's career, kind of the first port of call as it were. They have membership services departments that are amazing, very open, engaging. They have showcases that our artists can play at to showcase their talent, whether it's acoustic or electric. They have email blasts that go to music supervisors, where they talk about new groups that they love. They are the companies that new artists and writers think of first.

And for a new artist and writer to go to one of those companies and their first response is a rejection, I think that could be a devastating blow to what could be a beautiful and big career for that writer. And I think that goes to the initial part of the question is, what do ASCAP and BMI do for new writers? So, they do a lot and then if you get to just the mechanics of licensing and the security that licensees need, because we are in an ecosystem and we do need to consider very highly their needs, which I believe ASCAP and BMI do in a good way in their four pillars. If ASCAP and BMI can reject a songwriter and they have nowhere to go, their share is not licensed. And if their shares aren't licensed, there's nowhere to license it. So, it adds to the, kind of, parallel of the licensing regime in a certain effect.

OWEN KENDLER: Jack, in support on that, maybe you can weigh in, but also, in particular, how do you see competition developing in the absence of the requirement to accept all writers?

JACK KUGELL: I'm sorry, say that again, how do I see?

OWEN KENDLER: If the PROs no longer accept all writers, especially early in their career, how do you see competition developing and what the effect might be?

JACK KUGELL: Well, I think it would be a huge effect. The importance of joining the PRO at the start of your career, it's like, it's the first step to becoming a professional songwriter, which certainly worked for me. There's this elusive real music industry and when you link up with your PRO. They're supportive. It's a home base. There are people there who have knowledge, and as you're navigating this industry, especially when you're new, you're at a point in time when you know next to nothing and you know basically no one, so they really become your home base. They

can help you network, meet publishers, meet co-writers, music supervisors, label people. It's a springboard, even connect you with major artists. So, that being said, I do think that ASCAP and BMI should continue to accept songwriters, all songwriters. If there are costs associated with that requirement, PROs should absolutely be able to recoup that and that's pretty much what I have to say about that.

OWEN KENDLER: Bart, did you want to jump in?

BART HERBISON: Yeah, I mean, to echo what Jack said, joining a PRO is really the start of the career path for every songwriter. It's sort of a badge of honor and it's one of those career steps that lends legitimacy to "I am a professional songwriter," and it's part of every songwriter and composer's journey. But yes, with the view toward cost efficiency, ASCAP and BMI still should be required to accept on their songwriters and composers.

So, any modifications to the decree should not leave out the writers who are low earners or the songwriters no one would be interested in competing for. ASCAP and BMI have thousands of thousands of members who don't earn enough in royalties to offset the cost of collecting those royalties. And right now, they come out of the pockets of other songwriters. But what happens to them in the future, entry-level songwriters who are denied membership because of low earnings, if that scenario evolved, they'd never get the incentive or encouragement to continue to pursue their career path and that would just hurt the future of American music.

There should be special consideration also given to long-time members. When the songwriter's earnings diminish over time, or when a writer dies and their royalties are being distributed to their heirs, there should be some special views about why they can't be dropped under many scenarios. So, at the end of the day, PROS are going to have to balance the cost of collecting royalties with maintaining a PRO home for low earners and we believe there's ways to do that.

OWEN KENDLER: Clara, in the absence of the requirements to accept all songwriters as members, how would ASCAP behave differently, why, what changes would you make, or would you continue to take all songwriters?

CLARA KIM: So obviously with the decree and the requirement, it's not a consideration that we would seriously consider until the restriction was lifted. No doubt, ASCAP and BMI incur costs to provide services for its members and affiliates, and the requirements to take all comers does increase the cost base of ASCAP and BMI, but it creates an imbalance in the marketplace because unregulated PROs don't have the same obligation.

And, speaking for ASCAP, we do welcome all new songwriters, and we recognize that some will go on to be successful and some will go on to be super successful, and we want them to continue to stay members of ASCAP, but we recognize they don't have to.

There's more competition today for PROs than ever existed before, in addition to the two regulated PROs, theirs SESAC and GMR, and new, fledgling PROs that seem to pop up every day and they're not subject to the same restriction and we don't think that that makes sense. In fact, some

of our competitors think that it's a market advantage to be able to say that they're elite and invitation-only.

We would just like a level playing field in terms of being able to compete. And, maybe the answer is all PROs should have this obligation, but I think that, from an antitrust policy perspective, that doesn't really make any sense. And this rule actually is a little upside down because the original ASCAP decree was established to put restrictions on ASCAP and BMI because they were too big. And what this rule does is ensure that they only continue to become bigger and bigger. And as far as I understand current antitrust law, there are no professional associations, with even more members or more market concentrations, that are required to take all members.

OWEN KENDLER: Wait, so you would not take all members? Or, I didn't quite follow.

CLARA KIM: Well, we would see what would make the most sense for the organization and for the music industry. I mean, we are a membership association, so we are not concerned that ASCAP won't be responsive to our members, songwriters, and publishers, if the rules go away, because of the fact we are governed by a board of directors, 12 writers, 12 publishers, that are elected every two years by the membership, solely for the purpose of representing their interests.

OWEN KENDLER: Oh, we have a lot to cover, so we might just skip some questions.

JORDAN BROMLEY: Can I ask just to follow up on that?

OWEN KENDLER: Go on.

JORDAN BROMLEY: Just to kind of zoom in. Clara, I know that there must have been an impetus for the idea of changing the obligation to keep members. Is there just a group of members or a class or a certain level that created this discussion to begin with, or is it just the principle that if others don't have to, we shouldn't either?

CLARA KIM: It's very much the principle that we have to compete with other PROs who do not have the same obligation and want to take our members only after they've become extremely successful and have been nurtured by ASCAP and BMI. And, as a more broad matter, our view about the decrees is that we should be moving towards the free market and having less regulations. That doesn't mean that we won't do what our members want to us to do. It just means that the government isn't telling us that we have to do it.

JORDAN BROMLEY: I'm just trying to figure out how that affects competition by allowing new members somewhere to go. I feel like it would create more competition in that you are, kind of, the nurturing ground for new writers and then as they grow, they can choose to stay with ASCAP. I have many clients who've been career ASCAP writers and would never dream of leaving, but I'm just looking at the alternative of a real issue of writers not having anywhere to go and that's the reality of it. I mean, if you have that right, you probably use it in some fashion. I'm just trying to balance one with the other and see how they balance. So, that was kind of the basis of that…

CLARA KIM: The discussion is an antitrust discussion. I don't really see the procompetitive argument for requiring free market entities to take on customers or members. Why perpetuate, through the consent decree, a market that's imbalanced?

JORDAN BROMLEY: Well, I mean, I guess the answer to that question is only because it's been that way for so long and we have a thriving market. You know, if it ain't broke, don't fix it adage comes to mind. That's really it, but it could hurt in some fashion. It depends on how it's used, I guess.

OWEN KENDLER: Clara, can the PROs charge songwriters who don't make enough in royalty payments to really be worth the cost of keeping them on the rolls?

CLARA KIM: Well, it might be something that we would consider. this one is not something… As I said, we do welcome all new members. In fact, it's the music business. You don't know who's going to become the most successful songwriter until they become the most successful songwriter. But as a competitive matter, we don't think that certain PROs should be allowed to pick and choose who their members are based on who they think will be most profitable for them, and ASCAP and BMI cannot. It's just not a level playing field.

OWEN KENDLER: But we have a lot to cover so I do want to move on, but I know Bart wanted to say something on this topic.

BART HERBISON: No, I just want to make sure we get time for closing statements.

OWEN KENDLER: Okay, sure, no problem. So, there's a bunch of issues involving how long membership terms last, how many years you're in a PRO, how writers and publishers can resign and they can resign and the effect of what's called license-in-effects. So, the three, kind of, go as a group, they're hard to untangle. So, maybe we'll just start off with the term length. So, in the ASCAP decree, for instance, unless there's an advanced payment, the term length is limited to one year. BMI has different term lengths for writers and publishers, but how important is it, or how does it affect competition to have these term lengths? Maybe I'll start with Jordan on this one.

JORDAN BROMLEY: Well, I think the antitrust considerations are a bit over my head, but I can speak to the practical reaction that songwriters have when they learn, inevitably, of how they're able to terminate and withdrawal rights. We like the year-to-year, we think ASCAP got it right on that. We think that ASCAP and BMI should to do year-to-year with simultaneous windows. Sometimes your publisher withdrawal window is different than your writer withdrawal window, and you are able to send in a termination notice any time. Just want to keep everyone here, everyone else panel knows this, but it has to be at any time earlier than three months and any time later than six months from your termination date. So, you have a three-month window, two quarters before your termination date occurs, to send in that notice. But if they're staggered, then you just got to keep track of both of them and I think a lot of writers miss that. They don't realize that their publishing entity has to withdraw or terminate as well if they want to remove works. And they also don't know that if they have a publisher and administrator, that company needs to also submit notice within their window. So, it's up to three different notifications, which could be three different windows. And that is hard for writers to understand. Frankly, it's hard for lawyers to

understand. I know a lot of lawyers that I asked, "Oh, when's the termination window?" and they only tell me about the writers. So, it would be great to have a consistent, yearly window that every writer can use to terminate every level, so that they can withdraw their works. And, we can get into the licenses-in-effect later, Owen, if that's what you prefer and just talk about term limits right now. So, that's my input.

OWEN KENDLER: Danielle, from the publisher perspective, how do these term limits affect the publishers and how they work within the time limits?

DANIELLE AGUIRRE: I'm sorry, Owen, I had a little bit of feedback. I didn't hear the full question.

OWEN KENDLER: Oh, sure. We were talking about the simultaneity of term lengths and Jordan was talking about how that might affect writers, but I know you want to talk about how simultaneous withdrawal, resignation, affects publishers as well and how it affects the ability to compete the PROs against one another.

DANIELLE AGUIRRE: Look, I think here, I would say we generally agree in a free market where the PROs can make their own choices and what's best for their business. That said, I think where we're talking about maximizing competition for writers, I think anything that allows for a…

OWEN KENDLER: No, I think we lost Danielle.

JORDAN BROMLEY: I can finish her answer, Owen, if you want.

OWEN KENDLER: Sure, go ahead. I like the conspiracy of working together.

CLARA KIM: You're on mute.

OWEN KENDLER: Welcome back.

DANIELLE AGUIRRE: I'm back, I'm sorry. We're getting some very threatening clouds here and I'm wondering if the thunderstorms… but I apologize for that. So, my point was that I think that whatever can make the movement from one PRO to another, seamless and frictionless for writers and publishers, I think is what promotes competition the best. And if that means syncing up the affiliation term, then that's a great thing, but I generally think that we should be looking at ways to make this a frictionless, seamless process.

OWEN KENDLER: Thank you. So, I think you just want to turn to Clara for kind of a response. So why don't the PROs make it more easy for publishers, songwriters to do what they want with their licenses, their own copyrights to move between the PROs? And, go on.

CLARA KIM: Go ahead.

OWEN KENDLER: No, I was going to say, by getting rid of the provisions, is ASCAP helping to lengthen the terms, shorten the terms? What is the strategy and how will ASCAP use this new freedom to compete?

CLARA KIM: I think there's a misconception about how the rules work, and some of the issues are being conflated. As you pointed out, Owen, at ASCAP, every member can resign on an annual basis, and publisher members that have multiple membership entities are allowed to line up their resignation date if they want and pick any resignation date that any of the entities have, so we do tend to make it relatively easy to resign.

The issue about removing works is a separate issue. When a member resigns, they typically decide whether they want to leave their works at ASCAP or move them to the new society. And there are sort of complicated processes to effectuate the works removal, but it's kind of by necessity when you have 10 million registrations with hundreds of thousands of members, and you have rules that say that a publisher member has its own agreement, and the writer member has its own agreement with ASCAP, and we preserve the distinction between writer share and publisher share.

So, we're always balancing the multiple considerations when we set up the rules, but they're not designed to be able to make it more difficult. It's the way that we're able to administer. The other thing I would point out about the resignation, the work removal process, is that it really doesn't come up that often because the custom, the common custom has been that when a member resigns, they leave their back catalog at their then-current society and then they move to the new society and the new society licenses all the new works starting from the time of membership. So, it's a relatively new phenomenon where a new society will say you can only come into this society if you bring all your works and these issues have come to surface.

OWEN KENDLER: So, I take it from that answer that, ASCAP does not want to modify the decrees to allow simultaneous resignation by a songwriter and his or her publisher, and they may be annual but they may not sync up in the same day, the same month and quarter, whatever it might be, I'm hearing...

CLARA KIM: Well, if the question is, I think that you're correct in saying ASCAP doesn't want to add any more rules to the existing decrees, we think that there they're already enough.

JORDAN BROMLEY: I'll chime in real quick too. So just to clarify, what I was saying, what I was requesting on behalf of songwriters is that if we do look at revising decrees, I guess it would create another rule, but having a coterminous date would help with kind of the confusion that we've run into on numerous occasions.

And it's not as just ASCAP, Clara, I mean, we can only ask about it, but it's BMI as well. And mind you, BMI has two years for writers and five years for publishers, so that becomes even more difficult. And I will say also, sorry, I know you want to say something, let me just, and with the removals works a lot of times it's not the PRO, at least in my experience, it isn't the PRO that's requiring it or requesting it. It's our clients that want to bring stuff over because what's happened in the last five to 10 years is the proliferation of the administration agreement, so people now are used to being able to move the house. They're not leaving one house and leaving all their stuff

there to go to build another house. People are used to moving everything over when they move between publishing administrators. So, there's been a bit of a sea change of thought in terms of taking their catalog and putting it all in one place at once.

CLARA KIM: But you know that it's an extremely time-consuming effort to move catalogs. Publishers, when they do acquisitions, often take years to actually effectuate the transfers.

JORDAN BROMLEY: I know, I know. It's frustrating that it takes long and there's a lot of people that you have to deal with, but it's happening.

CLARA KIM: Operationally, there's just a huge amount of difficulty in managing, I'll just say, the minutia of all of the rights information. And there's not an easy way out. I mean, it's easy enough to say line up the exit dates or resignation dates or removal dates, but our systems are set up to deal with the capacity of the volume of works and members that we have and you can't just switch it on a dime.

JORDAN BROMLEY: Understood.

OWEN KENDLER: Just to change gears a little bit. I think there was a reference to license-in-effect. Jack, maybe you can talk to us about defining what license-in-effect refers to. Somehow, you're not… You're not muted, but we can't hear you.

JORDAN BROMLEY: I can do it or Bart. I've been talking a lot. I don't need to hog the space.

BART HERBISON: Who was that question for Owen?

OWEN KENDLER: Oh, so I was just asking Jack, but I could ask anyone, any of you could answer this question really. We hear the term license-in-effect, can you just define what license-in-effect means and how that affects the movement between PROs?

JORDAN BROMLEY: I can do it.

OWEN KENDLER: Okay, Jordan, go ahead.

JORDAN BROMLEY: So, what it is, and, Clara, please correct me if I'm wrong, but when you do want to remove works and you effectuate the termination properly, you've got the writer termination and the publisher termination, you're able to remove your works, but at least subject to licenses that are currently in effect. So, if you have a five-year radio deal and you're in year three, those compositions stay with BMI or ASCAP until the term of that deal is over.

OWEN KENDLER: And Danielle, maybe you could explain how the license-in-effect also affects competition for the publisher to move and for the writer to move. How it affects your members?

DANIELLE AGUIRRE: Sure, absolutely. I think that what I hear from my members is often simply that more than how long it is or whether they can or can't, it's just, I think that there's a sense of a vagueness around how they find out what licenses are in effect, the length, how long

certain catalogs are going to remain at their prior PRO. And so, I think that the issues maybe center a little bit about around transparency, or maybe just not understanding where they can get the necessary information to best to know, now that they've resigned and they're moving their catalog, how that'll work and what that timeline will be.

OWEN KENDLER: What kind of a typical timelines are we looking at in the industry? Is it like a year? Is it multiple years?

DANIELLE AGUIRRE: That might be a better question for Clara.

OWEN KENDLER: It's alright, it's alright. So, Clara actually I'll turn to you. So, Danielle brought up transparency. So, in what ways do ASCAP or BMI inform the resigning member, whether it's a songwriter, composer, or publisher, about the works that they have on file and what licenses they're in, so that they know when they'll start rolling off those licenses and move to their new PRO that they've chosen?

CLARA KIM: First, there's an important point I want to make about licenses-in-effect and then I will get back to your answer. The issue is that it seems to be implied that licenses-in-effect helps PROs. It actually doesn't. It's for the benefit of, primarily, music users, and it simply clarifies that if a music user enters into a license with ASCAP and expects that they're going to have the right to publicly perform the works of ASCAP members at the time, they have that for the duration of their contract. If there was no licenses-in-effect, then if a member resigning withdrew their works during the term of license, then the licensee would find that they didn't get the benefit of the bargain that they thought they had. And from a broader market perspective, a license that has license-in-effect assurances should be worth more than one that doesn't. And so, it should be driving license fees and a better royalty for our members.

As far as the transparency point is concerned, we do supply information for material licenses to our members, but it's subject to a process because we'd be very, very careful because licensed firms are competitively sensitive information and, under antitrust laws, we don't be telling our competitors competitively sensitive financial information. So, we do have to put some guardrails around what ASCAP informs our members about in detail. But as a practical matter, I will tell you that when a member resigns and is getting paid for licenses-in-effect, which they do always get paid for the continued licensing of their work after they leave. They get a comprehensive statement with their distributions, and they can see all of the licensees from whom they're getting payments and they will know from their statement.

OWEN KENDLER: And you can see the information… in the statement, for the most part, to the resigning member?

CLARA KIM: … at the beginning.

JORDAN BROMLEY: I wanted to chime in because one of our members had an experience about not getting paid on a license-in-effect after leaving. And I just wanted to highlight a couple of policies and I don't know, honestly, Clara, not honestly, I'm not trying to pick on ASCAP. We just have this information. One is that the last two quarters of a license-in-effect for a withdrawing

member are not paid and bonuses to a withdrawing member, which can account for about 90% of total revenue on a format like radio, are also not paid after a writer withdraws, but their compositions are still subject to the license-in-effect. So, while there still are payments made, they're pretty drastically reduced.

CLARA KIM: So, I'm sorry to say though, Jordan, that the information you have is not correct. The license fees under the licenses, and I know the situation that you're talking about, the license fees were paid through the entire period of the final license and it's the bonus that was subject to a four quarter phase-out and that's a rule that is in our survey and distribution rules, which is on our website and now we've actually made our website even clearer, so that when someone resigns and removes their works, what the consequences are. And one of the consequences is that the bonus is phased out over, for radio and certain audio services is phased out over four quarters.

JORDAN BROMLEY: You get paid less. So, the last two quarters, I mean, I'm looking at an accounting, but I could be wrong. I was provided with this. The last two quarters of any license-in-effect are paid through to the withdrawing member?

CLARA KIM: Yes, it's only the bonus and it's only if the member is eligible for a bonus and it's in the area of audio, like radio or over-the-top…

BART HERBISON: And, Owen, I would say this, ASCAP has made that clearer. I would challenge all the PROs to have a bullet point sheet, here's what happens when you join, here's how we pay bonus money, here's how we pay radio money, here's how you get your streaming money, and here's what happen when you leave. And as I said, I thank them for making that clearer. And I would also challenge the writers. Writers will often come like I'm considering switching PROs and talk to me about it and they've never read the writer's agreement. So, this is something on both sides that we need to understand, this is a business deal. I think the PROs can really make it, boom, boom, boom, in your face, what you're signing, and the writers and their representatives need to explain that better going forward.

JORDAN BROMLEY: I agree with that. And also, I agree with Clara's point that it is for the licensees and, honestly, while we would love to do away with a license-in-effect, we understand why it's there and we need to provide stability in this ecosystem. So, we get it. We get the reason why compositions need to stay through the duration of certain licenses.

OWEN KENDLER: Is there any information provided to the resigning person about the length of time for the licenses, more than just receiving the financial help? Like for how long the licenses will stay in effect with licenses you've already made to users?

CLARA KIM: Well, Owen, you know that because the consent decree says that music user licenses can't last longer than five years, it's never longer than five years because members' works are always subject to final licenses that are entered into while that member is a member of the PRO.

OWEN KENDLER: So, are just saying that songwriters should just know that five years is the max?

CLARA KIM: Five years is the max and we do give the information when it's needed or requested, but we do it with some guard rails to prevent violations of antitrust law.

JORDAN BROMLEY: And along Bart's comment, we would love some sort of understanding as to how to get that information. I mean, our suggestion is, assuming it complies with antitrust law, that when a writer terminates, they understand which licenses continue to be in effect and for how long, I don't know, like I said, I don't know if that violates antitrust law or not. It seems something that a writer should know when they terminate and, to Bart's point, it will help inform a writer in making their decision.

CLARA KIM: The term length of licenses is a competitive, based on sensitive information. So, I wouldn't want BMI to know when my radio license expires and ASCAP's radio license expires because it's competitive information.

JORDAN BROMLEY: Yeah.

BART HERBISON: And Jordan, I would just respond by saying I'm not as much about because the license are floating dates depending on a lot of different things, when they were made when the writer is leaving, but I do think there's a way to say "Here's what happens when you leave," and ASCAP did make some changes recently, but everybody needs to just go, boom, boom, boom, boom. Because I have seen writer's agreements in past years that lawyers couldn't understand. So, we just need to make sure that it's understandable, that it's there and I'm also challenging songwriters to understand it. It's their responsibility too.

DANIELLE AGUIRRE: I'll just note, I think there's a distinction between, because I completely understand Clara's point, there's the distinction between other PROs and competitively sensitive information, but there is a distinction between them and the writer themselves too. And I think they should be entitled probably to information about licenses that include their works. I'll tell you just from my own personal experience, with the MMA and beginning the new Mechanical Licensing Collective, that there are audit rights provided to copyright owners to audit the MLC, so that they can audit at any time completely what they have been paid, what the licensees are, and I think there is a benefit to that kind of transparency, generally, to the writers who are members of the PROs.

JORDAN BROMLEY: Yeah and maybe there's an NDA that's signed or something, some process. That makes sense to have guardrails, just some idea of how we get that information.

OWEN KENDLER: Well, under that four core principles, the skinny decree that the PROs were proposing, what would happen to that five-year limit that you mentioned earlier Clara? Would that be maintained or would that go away for licensing to end users?

CLARA KIM: Our proposal is that it goes away, and the thinking is that if a music user wants to have a longer license than five years, because they think that having negotiations with the license is burdensome or they prefer to have the stability of knowing that the applicable terms would be for a longer period of time, we should be able to enter into that license, just like the other unregulated PROs.

OWEN KENDLER: Well, how would that affect the transparency to resign for songwriters and publishers?

CLARA KIM: It might result in being subject to licenses-in-effect for a longer period of time.

OWEN KENDLER: Anybody want to respond to that?

JORDAN BROMLEY: I mean, look, I make deals all the time as an attorney and we try to keep them short. And it's always a balance between the rates you can get versus the length of time. A five-year deal on a license is a long amount of time and we would expect that, even in a free market, those term lengths might come down a bit. I understand that licensees need a solid period of time to feel secure. I think three years is a good amount of time. I think more than five years is a lot, especially when it affects a writer's ability to withdraw compositions and their ability to get paid at their full rate after resigning from one PRO and going to another.

DANIELLE AGUIRRE: So, I can just speak to that very quickly. I'll say we argue a lot in the mechanical rights space that the five-year statutory period for every rate setting is too long, given changes in the market. And often when we do deals NMPA, it is much shorter, a year or two, but again in fairness to Clara, I think they license a very broad variety of licensees who probably have different needs and different market changes. Digital services, which are the types of licensees I deal with mostly probably, have a market environment that changes much more quickly than other types of licensees. So, I suspect enabling a free market will bring in line how long licenses should be based on market circumstances.

CLARA KIM: I agree with both of you that for digital licenses and markets, that shorter periods are more advisable; that for established media and platforms, we might have a greater leeway because in fact, like in cable, the rate hasn't changed for 35 years. So, another example is bars and grills and restaurants are on a template agreement and they just automatically renew, but they do have a shorter, specific term. So, if you are licensing or boiling the ocean, so to speak in licensing degree, every music user, having some flexibility, when it's appropriate, is a good thing. And in terms of having a level playing field with our competitors, it's important.

OWEN KENDLER: So, we're talking a lot about the transparency in this license-in-effect. What can writers do, or publishers do, when they are joining a PRO? Can they negotiate those rights upfront for the exit rights? Do any of you have experience in trying to negotiate any from ASCAP or BMI, or the other PROs, about getting these exit rights that we've been talking about?

JORDAN BROMLEY: Bart or Danielle, do you guys want to...

BART HERBISON: I'm not aware of that, possibly.

DANIELLE AGUIRRE: Certainly not. I mean, I wouldn't be negotiating any way, but I'm not aware of that.

JORDAN BROMLEY: Yeah, we're not either.

OWEN KENDLER: Clara, does ASCAP ever negotiate with a songwriter or publisher certain types of exit rights or additional transparency rights?

CLARA KIM: As I just said, when members ask for LIE information, we do give it with the appropriate guardrails and process. No, we don't negotiate unique deals for individual song members. The membership agreement is… the writer membership agreement and the publisher membership agreement is something that's been approved by the entire membership and to be changed would require an entire membership vote. And the board has not adopted any special rules or allowed the leeway to negotiate special exits because we also want to be fair across the board and not create exceptions.

OWEN KENDLER: So, it sounds like you have to adhere to your membership, but you can't respond in competition from the other PROs. Is that kind of what I'm hearing? That, in other words, new competition from GMR, SESAC hasn't led to changes in membership rights?

CLARA KIM: If the membership wanted the board to consider making a rule changes, the board can make those rules changes. They can't make membership agreement changes, but they can make the rules that apply to members now. And again, we're now going into all the minutiae of how we should be better regulated, but we really want to move in the direction of being able to make our own decisions based on competition and free markets. And I understood the DOJ also wanted to move away from perpetuating these old decrees.

OWEN KENDLER: Well, yes, we're in favor of competition and I didn't know if anybody wanted to talk about how maybe GMR and SESAC out there in the market have increased competition for members or how has it affected competition between ASCAP and BMI?

CLARA KIM: Well, I just have to add to that point, every PRO has its own resignation rules and its own process for moving, from allowing members to move from one PRO to the other. And because there is competition, music creators can choose which PRO they like. If they don't like ASCAP's rules, then they can go join BMI and, at ASCAP, a writer can actually effectually the rules that apply. So, I don't think that we need to rely solely on… In fact, I don't think we should rely on a consent decree to make those decisions.

OWEN KENDLER: Oh, understood. I guess part of it comes back to something that I think Beth Matthews had mentioned earlier today, about how despite the new competition from GMR and SESAC, that ASCAP and BMI cumulatively still maintain quite high in market shares in this industry. And I was wondering whether competition from GMR or SESAC are changing the shares for ASCAP and BMI. Is their new competition for songwriters because of their existence that is somehow reducing, some might say, the market power of ASCAP and BMI?

CLARA KIM: There is fierce competition among PROs for high-performing members.

OWEN KENDLER: Okay, so maybe you could walk through how do you react to that. How does ASCAP react to that competition in the marketplace for competing for songwriters, composers, and publishers?

CLARA KIM: Just like any other PRO, we look at the value of the works that a potential member would add to the repertoire and to the value of our licenses. We look at the popularity of the member, based on the number of performances that member might have in a particular platform like radio. We look at other factors like the overall diversity of our membership and the benefits that member might be able to bring to the organization that are not purely performance- or popularity-based.

OWEN KENDLER: Is the competition really for… I guess the result of that is you pay advances for certain artists that might bring something to the table, but is there also competition for the contractual terms for instance or any other dimensions of competition?

CLARA KIM: Well, as a general matter, recoupable advances and commitment to remain a member to ASCAP or any PRO sort of go hand-in-hand, because if an advance is going to be recouped, there needs to be sufficient amount of time for distributions to recoup the advances need to occur. And so, the larger the request for an advance, maybe a longer term may be appropriate.

OWEN KENDLER: Anybody want to jump in before we move on?

JORDAN BROMLEY: I mean, this is again, the whole anticompetitive versus competitive… The way I look at it as an attorney for writers and a MAC member, MAC board member, is writers have four options for PROs, a fifth one just popped up and it allows writers to look at how performance royalties are collected and paid and how writers are paid from that. And it allows us to dig in deeper because we're seeing more options of choice and economy, frankly. And based on that, we're learning how this ecosystem works.

In the past, it's been hard to kind of lift the hood and see, and I know that there are ways to get information that are generally locked up because of antitrust issues. But a lot of these writers are operating in the dark and that goes to Bart's point, like a bill of rights per PRO will be awesome. Like here's what you get when you come here, because I don't think, I mean, there are some writers that talk to me about ASCAP collecting their mechanical royalties. And it's like, okay, let's stop right there, they don't do that.

So, it's a complicated topic and I think the way these PROs make themselves unique and competitive is based on what they do for you in your early stages. And then in your later stages, how much you get paid and whether and when you get paid. So, it's different for different writers.

OWEN KENDLER: Okay, so now we're opening up the floor to everyone, so Clara, obviously PROs are recommending good growth and improve membership provisions. In what ways would this new freedom allow you to compete better and allow you to help rights holders more?

CLARA KIM: Well, as I said before, we believe that when the membership rules, as well as the other rules are eliminated from the consent decree, we'll be able to respond and adapt to our members and use the users' needs, including license terms, membership terms, and other rule changes. But we think that should be a matter of self-governance and not a matter of the consent decree. And I do really think that we have to take into account that the competition now is much

greater and that does drive changes and we want to be able to do the adapting that's necessary in the free market.

OWEN KENDLER: So, I do want to give everyone a chance to get out what they might want to say and we're kind of running towards the end of the panel right now. But, in particular, I invite you all to kind of talk about anything we haven't talked about yet, about songwriter competition, how THE decrees affect songwriter competition and any modifications you would be advocating for, either new provisions or removing provisions, weakening, strengthening, what have you, and just to start off I'll turn to Bart first.

BART HERBISON: Thank you, so I'll make these brief. We mentioned earlier partial withdrawal. In a partial withdrawal scenario, if that's what DOJ decides, it's imperative that the PROs continue to be allowed to administer the songwriter share and so we can maintain transparency in the money flow, and that's important. We've done this before, Owen, under a different U.S. Department of Justice several years ago and it's not this U.S.-

OWEN KENDLER: We only have one in this country, but go on.

BART HERBISON: It was a different administration and a different set of office holders. And in that scenario, despite everything we told them about this issue of hundred-percent licensing, they went ahead and did it anyway. Judge Stanton overruled DOJ and said that's not what the decrees say. I cannot tell you on the street level, how devastating that would have been to songwriters. To simply explain it, now songwriters, instead of choosing who they co-write with creatively, the conversation would have been, "Are you ASCAP or BMI? I can only watch it with my colleagues from ASCAP or BMI." I say that to say this, and I really do thank Mr. Delrahim and others, because this seems to be a very thoughtful process you've undertaken over the past few years, do not do anything that's going to set off unintended consequences. And I would suggest this, if there are changes you contemplate that we all haven't given input on, particularly let the songwriters' groups speak to those before you would suggest implementing those. So, let's proceed with caution.

OWEN KENDLER: Thank you, Bart. Jack, did you want to have a chance to talk?

JACK KUGELL: Sure, I was just going to piggyback on what Bart was saying, which I think someone said at the beginning of this, it all starts and ends with a song. And there's no song without songwriters and, as such, we really want to be considered and if something's going to be tackled, it's going to have an effect on us, be it, a partial withdrawal. We want to be able to chime in and have a seat at the table and know that if our income should be regulated, we will have a voice in how the is going to be regulated, or if it's going to be regulated.

OWEN KENDLER: Thank you, Jack. Danielle, is there anything you haven't covered that you wanted to speak about?

DANIELLE AGUIRRE: Just very briefly, I'll say, I think we could say there's general consensus that the consent decrees are outdated. They don't reflect the state of the market for performance rights today. I think the NMPA and our music publishers and songwriters would say free market is generally the right way to go and will ensure a proper, competitive, efficient market and the best

outcome here. But again, Clara said before, she mentioned that lifting the requirement to take all songwriters could reduce ASCAP's market share, which would potentially benefit from an antitrust perspective. I will say something like selective withdrawal and allowing music publishers to actually leave a regulated collective, to negotiate their unregulated rates in a free market could accomplish the same thing in a much more beneficial and efficient way. And so, I just want to say again to close this, we are not opposed to modifications to this decree. We believe that modifications and any discussion surrounding those must include selective digital withdrawal, and I think that's where I'll end it.

OWEN KENDLER: Thank you, Danielle, and Jordan any concluding remarks?

JORDAN BROMLEY: Yeah, I've got just a couple of things. I wanted to reiterate what I've said at the beginning of this panel and what Bart and Jack have said is, without the song, without the songwriter, this conversation doesn't exist. And it's good to see Bart and Jack on this panel, and we need to see these groups at the table no matter what happens. The fact that we have been absent in these conversations in the past is a problem that we have now fixed. I'm glad we're here, don't do anything that affects songwriters without the songwriters' viewpoint, and if we're going to protect licensees, we should protect songwriters as well. But thank you.

OWEN KENDLER: Clara, I know you wanted to have a final word.

CLARA KIM: Yes, I would. Everybody on this panel knows that ASCAP values the songwriter and all of its members and it is the core mission of what ASCAP does, and so we all agree on that. I agree also with Danielle about the benefits of a free market and withdrawal of rights may have procompetitive benefits, but our judgment is that, on balance, if requesting that now escalates the risk that the music licensing community will go straight to the Hill and demand hundred-percent licensing or compulsory licensing legislation, that would not be good for anyone because we will have to spend a lot of time and money fighting against more regulation, which nobody wants. And so, our proposal is that we agree to some licensee protections that we don't really think we should have to, but we think that they're meaningful and it will provide a bridge to allow all the stakeholders to make the changes that are needed, so that the music licensing marketplace can actually function effectively and robustly without any regulation. Thank you.

OWEN KENDLER: I want to thank everybody for participating in this lively debate this afternoon and I guess I'll turn it back over to Karina.

JORDAN BROMLEY: Thanks Owen.

KARINA LUBELL: Great, thank you Owen and the Session 3 panelists for another insightful discussion. This will conclude Day One of our workshop, so please join us tomorrow at 12:30 p.m. Eastern for Day Two. We have another superlative lineup and we're looking forward to hearing a number of other perspectives on the consent decrees. So, on behalf of the Antitrust Division, thank you to our panelists and to our audience. Have a great afternoon and we hope to see you tomorrow.

July 29, 2020

Opening Remarks

- *Owen Kendler, Chief, Media, Entertainment, and Professional Services Section, Antitrust Division, U.S. Department of Justice*

KARINA LUBELL: Welcome to the second day of the Department of Justice Antitrust Division's virtual Public Workshop on Competition in Licensing Music Public Performance Rights. Once again, I'm Karina Lubell, Assistant Chief in the Competition Policy and Advocacy Section at the Antitrust Division. Before introducing our speaker, just a few reminders. An agenda and a complete set of bios for all workshop participants have been posted to the workshop website, a link to which was provided to you by your registration email. There'll be short breaks between sessions, but you may log in and out as needed. The Zoom link for all sessions is the same.

All members of the audience will be muted for the duration of the workshop. Should you wish to ask a question of one of the panelists, please submit it via email to ATR.musiclicensing-workshop@usdoj.gov. That address is also provided in your registration confirmation email and should appear in your Zoom chat history. If you have any trouble with your audio or video, or for any other technology issues, please contact AT&T Conferencing with Zoom Help Desk at 800-345-0857. And now I will turn it over to my colleague, Owen Kendler, who is Chief of the Media Entertainment and Professional Services Section at the Antitrust Division, to share some remarks to open Day Two of the workshop. Owen.

OWEN KENDLER: Thank you, Karina, and thank you everyone for returning for the second day of our workshop. So, as many of you know, over the years, the Division has reviewed the ASCAP and BMI decrees. From time to time, it has modified the decrees with the goal of increasing competition to the benefit of the industry's various stakeholders, whether users, publishers, composers, songwriters, and even the PROs themselves. That is because the Division's mission is to promote economic competition in a manner that protects economic freedom and opportunity.

We are undertaking a current decree review process with that mission in mind. As part of our review, we want to hear from the music industry whether the decrees continue to serve the important competitive purpose today, or whether certain decree modifications would enhance competition or the market's overall efficiency.

This workshop is another step in the Division's current review of the decrees. For the Division, the workshop provides a discussion and debate for us, especially between industry players, and that discussion-debate really highlights key issues for us.

Yesterday, we began with a series of speeches. The CEOs of ASCAP and BMI discussed why collective licensing is essential for writers, composers, publishers, and even the music users. They explained why ASCAP and BMI see the need to update their decrees and summarized their skinny decree proposal that centers on four core principles. Hopefully, I'm going to get them right. They are, one, non-exclusivity of licensing rights; two, the retention of the rate court process; three, the

retention of the current forms of public performance licenses; and finally, automatic access for new users to their catalogs.

We also heard from Michelle Lewis, on behalf of SONA. She provided a songwriter's perspective on the decrees and the need to keep in mind that songwriters and composers are central to the entire music industry.

We also had the privilege to hear from two songwriters themselves, LeAnn Rimes and Pharrell joined us. They also reminded us that without songwriters, there would be no music. And today, I'm kind of cheesy, but I'm a boy from Jersey, Exit 135. So, you know, I'm excited to hear from a central Jersey rock star, you know, Jon Bon Jovi's coming up next. I know you're all really here for that anyway.

We also heard a speech from David Israelite, on behalf of the NMPA. He represents publishers. The publishers are arguing for modifications not included in the PRO's four core modification proposals. In particular, selective withdrawal. David explained why the publishing community wants the ability to selectively withdraw their rights from ASCAP and BMI, so that they may directly license major digital streaming services.

We also heard a word of caution from Senator Gordon Smith, on behalf of the National Association of Broadcasters. He detailed how the decrees have effectively prevented significant harm to licensees and enabled broadcast TV and radio stations across the country to perform works without fearing public performance infringement claims. Given the history of the decrees, Senator Smith warned that changes to the decree's language could have unintended consequences.

Thereafter, we listened to two moderated panels. First, we heard a lively debate regarding alternative licenses. And once again, about the proposal from music publishers to permit them to selectively withdraw from ASCAP and BMI in certain limited circumstances.

Our second panel discussed and debated whether the decrees adequately protect the rights of writers, composers, and publishers, as well as competition among the societies to obtain and retain members. The second panel also discussed whether ASCAP and BMI should provide rights holders greater transparency regarding the rights remaining in a catalog after the member has elected to change PROs.

During the panels, ASCAP and BMI also described the database that they are building to provide greater transparency for users regarding the rights in their catalogs when they actually want to use the music and perform it.

Today, we'll hear from the final two panels. First, we will discuss the provisions of the decrees that affect music users. These include provisions that affect large businesses, like the streaming services, but also small businesses, such as bars and restaurants. The panel will discuss the rate court process and whether that process is effective and efficient today, or needs modification.

The final panel is comprised of two eminent economists, Dr. Kevin Murphy and Dr. Adam Jaffe. Each have significant experience with the economics of music performance rights, and these

consent decrees. They will discuss whether decrees promote or impede competition amongst the performing rights organizations, and the likely effects of modifying the decrees centered around the four core principles proposed by ASCAP and BMI. Now it should be a great day of discussion. I want to thank you all for joining, and for joining this important workshop. And I'll turn it back over to Karina because we have 12 million souls listening in. So, we just got to keep it moving. Thank you.

Songwriter Keynote (Jon Bon Jovi)

KARINA LUBELL: Thanks so much, Owen. As Owen alluded to, our next speaker really needs no introduction. The front man for the Grammy Award-winning band Bon Jovi, which has sold more than 130 million albums over the past three decades. The band was inducted into the Rock and Roll Hall of Fame in recognition for its impact on popular music. It is my pleasure to introduce Jon Bon Jovi.

JON BON JOVI: I want to thank you all very much for inviting me here today to speak to you. I'm proud to be a songwriter. And I came here to represent my fellow songwriters.

I've always loved music, playing music, writing music, and listening to music. I started my first band when I was 13. That band may not have achieved all we hoped it would, but it was a start. And in my late teens, I was playing clubs and working as a gopher in a recording studio, all while practicing my craft to ultimately become a songwriter.

In 1982, I was lucky enough to have one of my songs played on the radio in New York City. And the rest is history. But the feeling then, and now, is the same, because there was nothing like the thrill of hearing one of your songs played on the radio.

Today, when I think about all the aspiring songwriters out there looking for their first break, I feel compelled to speak up on their behalf. But especially now during this global pandemic, when everyone is struggling, and songwriters are no exception. Musicians, road crews, and even lead singers struggle to work from home. Our home is in the studio or it's on the road. I personally can't wait to get back out there, but I came here today to talk about songwriting.

Songwriting is a gift. It's an art, but it's also a job. As a songwriter, I had to learn to be an artist, but also to be a business person. Each song that you write is like starting and running a very new, small business. A songwriter pours their all into every song and they deserve to be paid for their work.

This is where the performing rights organizations, or PROs, come in. These organizations play an important role in making sure that songwriters get paid. The US Copyright Act gives each songwriter the right to be paid when a song is publicly performed on radio stations, digital services, at a concert, or even in a bar. It's the PROs that license those songs and pay royalties to songwriters. Without the PROs, individual songwriters would have to enter it into licenses with each individual radio station, digital service, or concert hall.

The music licensing ecosystem has been built around the efficiencies created by the PROs. Songwriters and the people who want to license their songs, rely on the PRO. Now I know that ASCAP and BMI are the largest PROs, and I understand that they're big like the telephone company or the big tech companies. So, the good folks at the Antitrust Division of the Department of Justice are hosting us today. And they've put some rules in place called the consent decrees, which allow ASCAP and BMI to operate as big market players, as long as they abide by the rules.

Now, everybody knows that these decrees protect the music licenses, but the decrees also protect the songwriter. The decrees are in place to prevent ASCAP and BMI from using their market power against the smaller players in the system. And the smallest player, but the most important in the whole public performance space, is the songwriter.

With existing rules, the system has been working. Songs get licensed, fans get to hear their music, and songwriters ultimately get paid. I understand that lots of lawyers, economists, and politicians have come together both yesterday and today to talk about the consent decrees and whether they should be changed. But I am here to implore you to think about songwriters when you are discussing these rules.

The consent decrees don't just impact the radio, the streaming services, ASCAP, or BMI. The consent decrees, and the system that has been built around them, affects songwriters most of all. ASCAP, BMI, and the consent decrees create this foundation of a songwriter's livelihood, and they protect the songwriter. Disruption to this well-established music licensing system could be catastrophic to today's songwriters, and to those who are just starting out.

Every new songwriter joins ASCAP or BMI. That songwriter knows that if you're lucky enough to ever write a song, they can get paid for it. Every young artist or songwriter I know felt like they never had a choice but to create music and to chase their dream. But the truth is, dreams just don't pay the rent.

If we don't have a system in place to make sure the songwriters get paid, we risk depriving ourselves and our country of the next generation of the great American storyteller.

I love being a songwriter. Now more than ever, I feel like my songs are giving me a gift that is beyond three chords of the truth, as they say in Nashville. My songs have given me the opportunity to use my platform as an artist to give back.

This pandemic, it's causing immeasurable suffering. Earlier this year, I joined many fellow natives of my home state to participate in the relief effort focused on Jersey 4 Jersey, raising money to help fight COVID-19. Many days and nights since this pandemic began, I've been at the JBJ Soul Kitchen, washing dishes at our foundation, or working at our food bank, helping to feed people who are hurting.

As a writer, I'm moved by life as I see it happen. One day, seeing a photograph of myself washing dishes, I was asked what should the caption under the photo read? And I replied, "If you can't do what you do, you do what you can."

This song is the story of us, each of us living in this moment together. Because music and songwriting have given me so much, I feel the obligation to look out for the next generation of songwriters. We cannot take them for granted. Do not assume that they'll be able to write the songs that you get to sing at weddings or graduations, or even at protests, if they can't pay their bills.

They need to be here to document our history because songs bring us together. And in these trying times, when we need to find common ground, songwriting is there. There is no music business, no radio, no streaming, no concerts, no music without songs.

So, on behalf of all of those aspiring songwriters out there, I implore you, please do not disrupt the system and change the decrees, do nothing that could potentially harm the future of those songwriters. Do what you can to ensure that songwriters are protected.

Consider this a collaboration. You get to be my co-writer. Be the future of America's storyteller right here, right now. You don't even have to learn how to play the guitar. Don't make your decisions stand in the way of the realization of that kid's dream to make a living from music. Do what you can to keep the heart of that dream beating in all the songwriters, somewhere in a bedroom or basement, picking out tunes for the first time because now more than ever, during COVID, songwriters need stability.

Songwriters and musicians have suffered enough. So, please protect that young songwriter, keep the consent decrees and the protections for songwriters in place, so that they can write the song that forever changes your life.

Thank you very much for allowing me this opportunity. Forgive me for my technological skills to pour my heart out to you. Have a great day.

KARINA LUBELL: Thank you, Jon Bon Jovi, for taking part in the Antitrust Division workshop. We're grateful to you for sharing your views on music licensing as part of this important discussion. Now, assuming the panelists are ready, we'll begin the next session. This panel on licensing music to users will be moderated by Ben Matelson, a trial attorney in the Media, Entertainment, and Professional Services Section of the Antitrust Division. Ben, the floor is yours.

Session 4: Licensing Music to Users

- *John Bodnovich, Executive Director, American Beverage Licensees*
- *Peter Brodsky, General Counsel and Executive Vice President, Business Affairs, Sony/ATV Music Publishing*
- *Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, NAB*
- *Stuart Rosen, Senior Vice President and General Counsel, BMI*
- *Tres Williams, Executive Vice President, Business Affairs, iHeartMedia, Inc.*
- *Moderator: Ben Matelson, Trial Attorney, Media, Entertainment, and Professional Services Section, Antitrust Division, U.S. Department of Justice*

BEN MATELSON: Welcome to our fourth workshop panel, Licensing Music to Users. Again, my name is Ben Matelson. I'm an attorney in the Media, Entertainment, and Professional Services Section of the Antitrust Division. On this panel, we will be discussing a range of issues, including how well the current ASCAP and BMI decrees are working or not working for various stakeholders; the impact of changes in the competitive landscape on the decrees; whether the decrees facilitate or hinder innovation and entry of new competitors; and whether certain provisions in the decrees should be preserved, changed, or removed. We're going to try not to duplicate topics covered by the other panels, but I expect we will touch on some common issues. A reminder that viewers can submit questions at ATR.MusicLicensing-Workshop@usdoj.gov.

To help me explore these issues, we are extremely fortunate to have a distinguished group of panelists joining us today. Their collective accomplishments would take most of our allotted time to list, so I'll be brief. Their complete bios are posted on the workshop website. First, let me introduce John Bodnovich, the Executive Director of American Beverage Licensees, which represents the interests of thousands of alcoholic beverage retailers, including bars, taverns nightclubs, wine, beer, and liquor stores. John manages the ABL's government affairs portfolio, including representation before Congress and federal agencies, the organization's grassroots advocacy efforts, and he acts as their primary representative with other industry stakeholder groups. And he's been with the ABL since 2003.

Peter Brodsky is the Executive Vice president of Business Affairs and the General Counsel of Sony/ATV Music Publishing. He's responsible for all of the company's business and legal activities in the US, and is also responsible for its digital initiatives, including licensing its catalog to digital music services and other platforms. He has over 20 years of experience in music publishing.

Next, Rick Kaplan is General Counsel and Executive Vice president of Legal and Regulatory Affairs for the National Association of Broadcasters. He's responsible for directing NAB's advocacy efforts at the FTC and other federal agencies. And prior to joining NAB in 2012, Rick served in key leadership capacities at the FCC, including chief of the wireless telecom bureau among other positions.

Our next panelist is Stuart Rosen, who is the Senior Vice President and General Counsel of BMI. The capacity in which he has served since 2011. He oversees global operations of the legal

department, directs the organization's legal affairs, and supervisors all within the company. He's also served on the board of directors of BMI. And he's been with BMI since 1996.

Finally, we have Tres Williams, who is the Executive Vice President of Business Affairs for iHeartMedia, where he advises the company on various business and legal matters across multiple divisions. And he is primarily responsible for the company music rights strategy, including PRO licensing. He has more than 20 years of experience in the music industry. And before joining iHeart, he was the General Counsel of the startup Thumb Play.

Welcome to all the panelists and thank you for being here. Let's move into some questions and answers. As many in our audience may know, the Antitrust Division solicited public comments on the decrees in 2019. We received over 800 comments raising a wide variety of issues. The first issue I'd like to discuss with you is the impact of changes in technology in music distribution and consumption in the last 20 years or so since the decrees were last revised. ASCAP in its his public notes, "with the advent of new technologies, the increasing availability of wireless and broadband services, and the proliferation of devices capable of streaming audio and video content, the model for content distribution and consumption that held true for more than 60 years has materially changed over the last decades, and with increasing rapidity in the last few years." BMI's comment also makes a similar point. And I'd like to start off by asking Stuart Rosen of BMI, given these various stages in the landscape, are the consent decrees out of sync with how music licensing is done today? And do they need to be modified in some way to reflect these changes in how people are consuming music?

STUART ROSEN: Well, thank you for having me. I'm here to answer any of your questions. Before I start though, I like working at BMI and my board would want you to know that I was the corporate secretary. I didn't actually serve on the BMI board.

To answer your question, certainly technology has impacted the way music is licensed. You don't have to look farther than digital music services where when our publishing affiliates make direct deals with them, which they do often, they will combine multiple rights within that license because the nature of distribution of content online requires more than a single right. But I think to answer your question more broadly, and please indulge me, because I do want to kind of set the context for this discussion. I think it's a competitive landscape that has really changed more than anything else. And there's not anybody on this call and there's not a single participant in the marketplace that isn't in a much different position today than they were when the decrees were first entered into, forget about 1994 when the decree was last modified.

So, if we start with PROs, there are more PROs today than ever before, and they're not small competitors to BMI and ASCAP. SESAC is funded by a venture capital firm. GMR, certainly well-funded, serious competitor. So that's changed.

If you look at direct licensing where in essence, our publishers are competing with us for those licenses, you've seen a dramatic increase in that, particularly with the rise of digital, but not exclusively to digital. If you look at foreign PROs, they are not currently competing for our business, but particularly if you look in the digital area, there's no reason why they may not find that an attractive option in the future. But it's not restricted to the changes with the PROs.

If you talk about from the licensing side, from the licensee side, if there was ever a concern that BMI was negotiating with mom and pops, well, these days we're negotiating with the FAANG companies. And if there's a Goliath in that equation, it's not BMI. Our publishers have grown similarly in their part now of huge entertainment conglomerates, and that really informs a different change, a different relationship with BMI as an affiliate, as a member.

Where I think there's a really been a profound change that I wish was maybe explored a little bit more on yesterday's affiliate panel is the choices that our songwriters have today. I think songwriters have more choice today regarding PROs than they ever have, and not just number of PROs. Every PRO goes about it differently. If you're talking about duration of affiliation as we were yesterday. If you want a one-year agreement, go to our friends at ASCAP. If you want an agreement for a little bit longer, you come to BMI, and if you want a relationship that's longer than BMI can give you under our decree, you have unregulated PROs as well. It goes beyond their terms. We have different rules for membership. They're all published. They're all available online before you sign on the dotted line as an affiliate. We value distribution differently. That's a key consideration. And these days there's a consideration as to whether you are or aren't regulated. If you want to be under a PRO that's governed by a decree, you can do it. Jon Bon Jovi did for most of his career and stay within a regulated PRO. And if you think that there's greater freedom with an unregulated PRO, you can do what Jon Bon Jovi did and joined an unregulated PRO. So, I think certainly from the songwriter perspective, there's an enormous amount of choice. And I think that's proof that you don't need a decree to regulate that part of the industry.

The last thing I want to say is this is a behavioral decree. And that means you ought to be looking at BMI's track record of behavior over these 80 years if you want to see if the decree is still a good fit. As Mike O'Neill said yesterday, BMI's never been found to be in violation of its decree by the DOJ in all this time. And I was a little surprised yesterday when David Kokakis may have suggested that the PROs might be interfering with direct licensing. In that space, we certainly compete for those licenses. Absolutely. Do we assist in some ways on those licenses? We do admin for a lot of those deals, so we certainly do, but we do not interfere with that. But look beyond the fact that BMI has been a good corporate citizen and a good citizen under the decree.

Let's look at what BMI does that we are not required to do. The types of licenses we offer go beyond the minimum, we offer, Mike Steinberg yesterday talked about a claims-based licenses. It's not required by the decree. We talked about through-to-the-viewer licenses. We license well beyond the strict broadcaster category that our decree requires. If you're an affiliate, we could require that you affiliate for many, many more years than we ask of our affiliates, so we're not even pushing the limits there. And if you're talking about databases, I just want to remind the group that BMI doesn't have a requirement in its decree to provide works data, and yet we've been doing it for decades, only because we're trying to meet the needs of our customers. So, to wrap up, when you look at all the different factors, when you look at the changes in every one of the market participants, and you look at BMI's behavior, the decrees don't really make a lot of sense. And that's why we're advocating to move to a modified decree eventually towards sunset. Thank you.

BEN MATELSON: Okay, thanks. I appreciate the speech. Let me turn to Rick and ask what is your response to this idea that the competitive landscape changed dramatically and therefore the decrees should be modified? What is NAB's view on that?

RICK KAPLAN: Well, first of all, thank you. It's great to join Stu and the rest of this very esteemed panel. And I'd also like to thank Assistant Attorney General Delrahim and the Antitrust Division for inviting NAB to discuss music licensing. These issues, as you've heard about and you'll continue to hear about, are complex and incredibly important.

You know Ben, the fact that there are new music platforms in no way whatsoever changes the essence of performing rights organizations, meaning they simply do not compete for licensees. While they may compete on the songwriter side, they don't compete when it comes to licensees like broadcasters. You'll also hear from the beverage licensees as well. Nothing has changed in the last 60 or 80 years that has altered the fact that PROs are, in antitrust terms, cartels. Broadcasters for one rely on PRO licenses in the same exact way they did in 1941. And this isn't just my opinion. Indeed, every prior administration over the past 80 years has agreed, whether implicitly or explicitly, that the decrees there in the public interest and they remain necessary.

Speaking of which, I find it somewhat amusing over the last day or so that many of the participants during these round tables have really leaned in with mentioning that the ASCAP decree is almost 80 years old and sounds ancient. And while it's true that the Department birthed that decree in 1941, the very same Department just renewed its strong commitment to the decrees in 2016. So, actually, the courts on top of that reviewed the ASCAP decree as recently as 2000. So, while I love a good rhetorical flourish as much as the next Washington lobbyist, the true metric here is four years. It was just four years ago when the government thoroughly reviewed the decree, so the question here, when the Department looked to be things top to bottom and determine they were essential to the public interest, it's really in just the last four years they made that determination. And there are no changes that anyone can seriously argue have occurred over the last four years that changed that competitive landscape.

And the last thing I'll say, and we work very closely with BMI and ASCAP, and Stu's really great. And the one thing is, and Mike O'Neill mentioned this yesterday, too, this notion of never violating a decree. That's not really the standard in any kind of law, let alone antitrust. You're supposed to adhere to your decrees. What the decrees are trying to address is the incentives created by the structure. And in this case, the structure is by amassing all these rights and asking the government to be allowed to sell them in a way that could certainly charge supra-competitive rates. Right?

So as a licensee, as a broadcaster, you cannot choose between ASCAP and BMI. You don't go and say, "Oh, I've got ASCAP locked down. I didn't have to worry about the rest of that," because you need both to operate. Whether it's TV stations, radio stations, you have to have both, and now you need GMR and SESAC. So, these are all must-have catalogs. You need these repertories to be able to operate. So, the fact that they haven't stepped out of line from that doesn't actually suggest anything because there have been, they obviously want to adhere to the law and the folks at BMI certainly want to and do, but if the law wasn't there, then that would be big trouble for licensees.

BEN MATELSON: Thank you Rick. Let me, let me bring in John, because I think the perspective of his members, which include a number of smaller businesses like bars that license music. And can you give us a sense from, from your perspective, John, these technological changes that we've been talking about in the way music is distributed and consumed, has that made the decrees less relevant for music users like once you work with?

JOHN BODNOVICH: Sure. Well, Ben, thank you so much for the question. I want to thank you. I want to thank Assistant Attorney General Delrahim, Karina Lubell, and the team at the Department of Justice for so swiftly bringing this workshop together. I really appreciate the opportunity to be part of this panel and share a small business perspective as the true David to the many Goliaths that have been mentioned yesterday and already again today, as part of this workshop. As you mentioned off the top, American Beverage licensees represents thousands of independent bars, taverns, as well as liquor stores, across the country. Many of whom, particularly on the on-premise side, purchase licenses for the public performance of music in their businesses. My members and the on-premise community have long been engaged in issues surrounding music licensing. And before I directly answer your question, I just want to just indulge me to take a quick moment to acknowledge a couple things that are really inescapable in our day and time.

First is the COVID-19 crisis and what it's meant for the hospitality industry, in particular, bars, taverns, and restaurants. I've listened yesterday and again, to Jon Bon Jovi, today talk about the plight songwriters and the issues that they're having in terms of the shutdowns and whatnot. But those are direct effects as well. And we can relate on my members. Since mid-March, many bars and restaurants across the country were closed down for up to a hundred days, forcing them to lay off employees and go through quite a bit of financial trauma. We're now seeing re-closures of those businesses or even limitations to their seating capacities and open hours. A lot of those businesses are essential businesses. They provided food, beverages. Our friends in the hotel industry have provided housing for first responders. And really have served as a gateway to other critical staples during this crisis. So, we view that it is imperative that our members be permitted to continue providing services free of distraction of unrelated matters to the current crisis. So as the Department of Justice considers making changes to the consent decrees, take into consideration of potentially burdensome changes to the hospitality businesses that could come from this review.

The other quick point I will make before responding directly is just to note that I very much appreciate being here today, again, as the David, but I want to just point out that as a venue organization, so to speak, in the music licensing ecosystem, we're just one group of, I think, a community that's a little underrepresented during the workshop yesterday and today. Relatively, our individual businesses are small, but collectively would pay tens of millions of dollars in licensing fees each year. And just as without the PROs, songwriters would not get paid, without venues, they wouldn't have their songs played. And that's important to keep in mind. So as kind of the other half of that economist relationship, I just want to emphasize, I think it's important that the hospitality industry has its voice heard. And again, appreciate the opportunity to share that today.

To answer your question, the basic operational functions of licensing collectives and the mutually beneficial and essential efficiencies that are provided both to songwriters and to licensees really have remained consistent and constant and vital through the time that they've been in existence.

For bars and taverns, most of them avail themselves of a blanket license, not that much has changed. And the advent of internet and technology allow for online payments and new commercial platforms for providing music to customers, but really beyond that, you still have music and retail businesses and musicians performing live in bars and clubs as they have for decades. And obviously that's in a pre-COVID-19 reality, and hopefully one that we return to soon.

So, with all that said, I just want to point out a few things that as we review the relevance of the decrees to this day. First and foremost, they provide protection from anticompetitive behavior, thanks to the existence of reasonable rates mechanism and counterbalances ongoing price collusion. I think that Rick was kind of leaning into that a little bit. They allow businesses, bar businesses, when they open their doors, to be able to play music. Bars and taverns know that regardless of what type of bar they are or where they're located, or what type of music they play, they're going to be charged a rate akin to other similarly situated businesses. They can rely on that knowledge. They know that with an efficient blanket license, they significantly reduce their risk of copyright infringement and the need to individually license with thousands of artists, which we know they just wouldn't be able to do. And finally, and perhaps most importantly, they know that through this process, the fees that they're paying are going to be distributed to their fellow small business people, in particular songwriters. So, you know, we view them as relevant today as ever before. Regardless of other potential changes that may be going on in the music business, it's very much a similar situation for my members today.

BEN MATELSON: Alright, great. Thank you for the perspective. I also wanted to ask Peter to weigh in on this from the publisher perspective. Had these changes in the competitive landscape made the decrees less relevant today than prior to the digital era?

PETER BRODSKY: Okay. Well first, thank you to the Department for putting on these workshops and for inviting me to participate. I just want to mention that I'm, as Ben mentioned, the General Counsel of Sony/ATV Music Publishing. I'm here today in that capacity. I also sit on the Board of Directors of ASCAP.

To get to the question, for us, the needs of the decrees depends on the type of user. The decrees still serve a useful purpose for bars, restaurants, terrestrial radio and other broadcasters. For those types of businesses, the decrees were put in place to address a failure in the marketplace and allow for collective licensing. That need still exist today, but the decrees were not designed for the modern music business, where a handful of the largest and most powerful companies in the world control the audio streaming business. Simply put, one size does not fit all.

Collective licensing is not needed for the audio streaming business, where you have a huge concentration of that business controlled by a small handful of companies, and the companies that control that business certainly don't need the protection of the antitrust laws to protect them from songwriters and music publishers. It's actually unbelievably ironic that, literally, as we sit here right now, those companies are in Washington defending themselves from claims that they're too powerful. That's why, you know, at Sony/ATV, we believe that decree should be amended to allow for the withdrawal of our digital streaming rights, which will allow us to negotiate in a free market. The fact of the matter is that we already engaged with those companies for rights, such as lyrics

and video, which we're able to negotiate in a free market. And we don't believe there are valid antitrust reasons for not adding performance rights to that list.

BEN MATELSON: All right. Anyone want to respond to any of the points that have been made, or we can move on to the next topic if we're ready? Okay.

RICK KAPLAN: I think I'll just quickly note, and obviously we don't, unfortunately there's not a representative from those services on this panel, which I think would be useful, but just from that side of the house, I think it's important to understand that none of that, whether or not there are large companies involved, and obviously NAB, for example, represents large and small, it's very important to understand that none of that changes the context of the PROs and their ability to exact supra-competitive rates. And actually, built into the process, what makes the consent decrees, why they've lasted so long, and been so effective, and music has really developed and flourished during that time is that they allow for that. So, the courts, and we'll get to this in a minute, to account for what would be a market rate that would be negotiated. So, they can take into account those sorts of things, so if there's a bigger company on one side, that's certainly something that they can account for.

PETER BRODSKY: I think that a point in this panel, we're going to get into whether the rate courts are effective at actually doing that.

BEN MATELSON: That's right, right. And we will circle back many of these issues that we've touched on. So, let me go ahead and move on to the next topic, which is the area of innovation. And we're interested in how the decrees affect the ability of innovative new business models to enter on the user side of the market. We talked yesterday about the PRO side, and the songwriter side, but for the users, do the decrees facilitate or hinder new entry? And are there any examples you can point to that might be helpful on this? And let me, let me start by asking Tres to weigh in on this.

TRES WILLIAMS. Sure. Also saying thank you for having me. Thanks to Mr. Delrahim and the division for putting this together, an important topic to have an open discussion about. iHeart is a friend of the music industry. Connecting fans with the music they love is really core to what we do. We love to promote music. It's really, if you think about what radio and now our, our digital services, really through the beauty of the consent decrees have been able to do is innovate and delight fans with music they love and bring new music, introduce new music, to the public. And we take that core will seriously. And, you know, we really are focused on paying songwriters fairly and efficiently and quickly, and think that the consent decrees actually do a really good job of that today, as they are.

Echoing what Rick said earlier, music licensing really isn't a free marketplace. We don't have a choice between ASCAP and BMI. It's not Coke and Pepsi. You know, we have to take both, they're both must-have catalogs. And what hasn't changed is that those are the dominant players in the licensing of performance rights, by far. Also, we don't always control the music that we play, nor do we know who the songwriters are for new music, so those problems add to the complexity that are really facilitated by the efficiency of the blanket license. So, from our point of view, the consent decrees have worked very well.

In terms of innovation for the last 10 years, iHeart has done a lot to change its business and really transform this business from a traditional radio company to a company that does digital radio, simulcasting our radio stations, bringing music to fans wherever they are, and on any device that they want to listen to it on. I think there've been other panelists that have sort of marveled at the idea that you can go back and listen to a song that was a favorite song of your childhood without having to sort of dig through your old record collection. And I think that that kind of innovation is really what has been facilitated by the protections afforded by the consent decrees, the ability to feel comfortable that you have a license upon request, the protections of the rate court to set a fair rate, including non-discrimination being similarly situated. And again, have that efficient process. I think it's amazing to follow Jon Bon Jovi on a panel like this, being somebody that also lives in Jersey, Exit 151. But I think he mentioned earlier today that they serve a critical role of making sure that songwriters get paid in an efficient way and fairly. To answer your question, I think that they're critical to promoting innovation.

BEN MATELSON: Okay, let me Stuart to weigh in on this. You know, what's your perspective on whether the decrees are helping or hindering innovation?

STUART ROSEN: Thank you. Well, first before we get there, Tres, all of us on the panel can tell our kids that Jon Bon Jovi opened for us, which I think is kind of awesome. But to the point of similarly situated, we do find it a restraint, a constraint on BMI. The interesting thing which may be not everybody realizes is that more often than not, it's the user, it's the licensee who's coming to BMI, trying to get us to take a different approach. They believe their business model is different. They believe they need a different approach. BMI would love to meet the needs of every one of our customers, but the rubric we have to go through is are we going to violate the consent decree in doing so. They may have a different approach. it may be a scrappy startup like iHeart that wants to use, they have a lot of music, but they don't yet have a lot of revenue. We're constrained in what we can do. And we'd love to be able to meet that challenge, but can't.

BEN MATELSON: Just to follow up on something that your BMI colleague, Mike Steinberg, mentioned yesterday, that the decrees have slowed the introduction of new license types by BMI. And I was wondering if you'd care to elaborate on that, and talk about what issues you were facing that made it difficult to innovate in the area of licenses.

STUART ROSEN: Okay, so let's imagine a real scrappy little startup and they're coming to BMI, and they have an idea for a new approach, or let's say a bigger group comes to BMI and wants to have a different pricing structure than anybody else has done. This is an optimal chance to have a pilot program, to try it out. Maybe it'll succeed, maybe it won't, but it's the kind of small risks you can take in the hopes of being innovative. When overlay on that an obligation that if I do it for that startup, I'm going to have to do it for everybody else, and I don't have a choice in the matter, the whole risk calculus changes. And so, we are necessarily more risk averse when to try something new could carry the implications of carrying over what might not be a successful program across a class and category.

BEN MATELSON: Thanks. So, what you're touching on is where I wanted to go next, which is the similarly situated provisions, which have long been in those decrees. And they say that the

PROs may not discriminate in license fees or other terms among similarly situated users. So, is there still a need today for these types of non-discrimination provisions? And, for the licensees on our panel, how important a role do these provisions play in the pricing for your industries? And let me start off with Rick on that.

RICK KAPLAN: Sure, thanks Ben. Important. I'm sitting here somewhat a little bit flabbergasted at what Stu saying because licensees have had to go to court to enforce the provisions of their decrees that allow for things other than a blanket license. So, there's a history here of licensees wanting to do different things, and not because the PRO feels like they can't do it, but because it's not economical in their view to continue to do it, so they don't allow that to happen. So, licensees had to actually go to court and get the decrease enforced to allow it to happen. So only because of the decrees have they've been able to beat things like the adjustable fee blanket license. So that actually makes the point of why they're so important.

And if there's a misunderstanding, I think one of the critical things here is small users, and I'm sure John will talk about this too, small users, and we represent a lot of them, thousands of radio stations, who are very small who rely on that because they can't go to rate court. It's not easy for them to go to rate court. And if every time a PRO could just be like, "Well, you'll have to get a rate court to get the fee you want or think is reasonable," that's a problem. So similarly situated is an important way of allowing the small broadcaster, and a lot of small licensees, to have some comfort that they'll be able to get in the door. And if you want innovation, if you want new things, if you want choice, I think that's critical.

It also sort of strains credulity to think that the Justice Department in enacting the decrees with the courts, that they would have the decrees be something that would not allow the PROs to drop prices, right? So, someone came in and said, "Look, hey, I've got this innovative model. In fact, I'm going to maybe use more of your repertory if you give me a better deal." That's allowed. I know that a lot of our licensees, a lot of licensees say that they hear from the PROs, "Oh, we can't do that." They can. They can lower prices. It's not maybe in their interest to do so, but that, that is something that is allowed today. And in fact, the decrees do not allow, let's say a new deal is cut by BMI. It doesn't allow someone to go in and say, "Oh, well, you need to change my existing deal." That's not allowed. It would affect maybe future deals perhaps, but again, you couldn't open up a current deal and redo that.

STUART ROSEN: I can respond.

BEN MATELSON: Yeah. Let me actually, let me, I wanted to go to Peter next and then, Stu, you can follow.

STUART ROSEN: Thank you.

PETER BRODSKY: So now I get to open for you, Stu. Listen, on this point, it's actually surprising to me that we all don't agree. The similarly situated provisions from, Sony/ATV's perspective and others on this panel, I think, hinder innovation and we don't think they're necessary. As a practical matter, at Sony/ATV, when a new licensee comes in the door, we look at, if there are any, any similar businesses that we may have previously licensed and we use that as a starting point, but

the point is similar is never the same. Even if it looks the same on the outside, when you dig into it, it's never the same. There are always differences. And we're able to then tailor that license and the deal to a licensee's particular needs. So, we don't think that ASCAP and BMI should have their hands tied by a similar situated requirement. And we don't think it's good for the licensees either. I think this is, this is to me an easy one.

BEN MATELSON: And can you explain why, why is it bad for licensees?

PETER BRODSKY: Because they, because of the innovation, because similar is not the same. And if they've got particular needs, then a deal can be cut to tailor their specific business.

BEN MATELSON: Right, thanks. Stu, can you respond to some of the points Rick was making? And then also maybe you could address, do you believe the similarly situated language needs to be updated or revised in some way? Or are you advocating that it should be removed entirely?

STUART ROSEN: Well, we think it should removed entirely, but let me, to sort of explain that, let me address some of Rick's concerns. First of all, let's talk about small businesses. If you're looking at the eating and drinking establishment category, about 40% of that category is made up of what we call minimum fee licenses. There's no negotiation there, it's a rate cart, it's a "sign on the dotted line" and use the music. BMI has zero interest in engaging in 22,000 different negotiations with minimum-fee licensees, or 60,000 in the category. And it's not just on the brick and mortar area. If you look at the digital licenses, 80%, nearly 80% of BMI's digital licenses are minimum-fee licenses. That's not where the negotiation is going to happen. Where the negotiation is going to happen is with some of the people on this call, when they want a modification, they want a different approach, and we want to be able to meet their needs.

Another thing for small businesses though, it's incredibly prohibitive, it's prohibitive for everybody to go to rate court and it's especially prohibitive for a small business to do so. Luckily, for the last 22 years, the Copyright Act has provided in 17 U.S.C. § 513, I believe, it is what we call the circuit rate court. It is a localized proceeding where small businesses, and it's defined in the act, can bring individual proceedings in their local judicial districts in front of a magistrate judge who will ultimately make a recommendation to the rate court judge. These are cheap. They are streamlined. They're easy. And you know what, nobody pursues them. In 22 years, we've never had a case gone to trial, by my memory. And I'm not even sure you can count on a full hand, the number of people who even filed it, but the remedy to be sure is there.

Final point, if we got rid of similarly situated today, there's an awful lot that prevents BMI from being completely arbitrary in what it chooses in prices. There is rate court itself for the big users. There is a long-established line of case law, and there's this little thing we keep not talking about, which is antitrust law. Antitrust laws' not going away. And so, there are certainly constraints points on all of your concerns, Rick, but I don't think we require a decree and certainly not a decree with its current constraints to get to that destination.

RICK KAPLAN: Ben, can I jump in real quick?

BEN MATELSON: Sure, actually I wanted, before that I wanted to hear John's perspective…

RICK KAPLAN: Ben, you cut out a little bit on your volume.

BEN MATELSON: I'm sorry. Hopefully you can hear me.

JOHN BODNOVICH: Yeah, that's better.

BEN MATELSON: So, I wanted perspective on this. You know, Stu mentioned the fact that for many of your members that don't directly negotiate on price. To what extent do they rely on these similarly situated requirements to ensure that they are getting a fair price? And what would happen from your perspective…

JOHN BODNOVICH: Okay, I didn't catch the last part of your question, but I'll try and…

BEN MATELSON: Sorry, it was just what would happen from your perspective if there's a similarly situated provision fall away?

JOHN BODNOVICH: Got it. Okay, so, I've spent a lot of time over the past decade working with my members to try and improve relationships between on-premise hospitality licensees and PROs. It's been a very damaged relationship over the years. And if you talk to your average bar or tavern owner, they're going to tell you that business practices that they've experienced over the years, with the companies like ASCAP and BMI, have been troubling to say the least. Now, I think that a lot of that's improved and I think, and I give credit to ASCAP and BMI for taking steps to do go in the right direction in terms of their customer relations, but I think there's still a ways to go. And I mentioned that because I think that colors this conversation, colors the perspective of their clients, so the people who are purchasing these licenses. So, while I would like to think that removing these provisions for similar situated would lead to a floodgate of goodwill and discounts and new opportunities for innovative operators, I just don't know if there's any evidence that points to that being the case. I think it's a lot for these small businesses to see these entities that wield this fantastic amount of power and just say, "No, take us at our word. We're not going to try and adjust the 40,000 accounts" that Stuart just mentioned. You know, I don't know if that's going to be in writing anywhere, but I mean I think that's the kind of reaction that you're going to hear. And the one that I would suggest is more commonplace out there.

So, beyond just that trust factor as well, I think you look into viewpoint discrimination issues, picking winners and losers, and how that can affect a business, in terms of what they're paying for their fees and their ability to have a license whatsoever. So, if you get into that, it gets devastating. Yes, there are remedies through the courts. I agree, you know, but a lot of, a lot of the challenges there have to do with the resources of these small businesses and the idea of getting into some sort of asymmetrical litigation with a bar and tavern, or even a small group of bars and taverns versus ASCAP, BMI, whomever, is really kind of scary for a lot of small business owners. So, I think that's the perspective that they're looking at is that there may be opportunity, but that's far away by the risk of what potentially could be done to them if the similarly situated provisions are removed.

I just close on one last thought, we're talking about innovators and innovation. And I think, and I know we're going to lead to this, but we should also start talking about data and knowing the universe we're dealing with and allowing that to help innovation. I know we're going to get to transparency and database conversation, but to me that that's part and parcel of this as well.

BEN MATELSON: Okay, and Rick.

RICK KAPLAN: And yes, just quickly I may be, I am cynical, and I grew up in New York, so Exit 50, Long Island Expressway and, Tres. So, but you don't see anywhere in the record, licensees aren't asking for this, right. So, you would see if what Stu is saying is true, you would see lots of examples on the record, licensees saying, "Hey, look, this provision is too restrictive." We really want to be, that's not the case. I think that's an important thing to think about. At the point where licensees are saying "We really would like that removed because it actually could really help us," then you need to see maybe it's procompetitive.

BEN MATELSON: Okay, and let me go to Tres for a final perspective on this. Do you believe the PROs have sufficient flexibility to offer the kinds of special discounts or deals that Stu was talking about, as the decrees are written, or do you think more needs to be done on this?

TRES WILLIAMS: So, it's an interesting hypothetical question. And, you know, we haven't been offered discounts in our negotiations with the PROs. In fact, what I've read from folks, like they ask ASCAP's economist as part of the reviews of these consent decrees, suggest the opposite, that if the consent decrees restrictions were removed, that, you know, prices would go up. So, in terms of similarly situated, I'll echo some of the other comments about it really protecting the smaller users the most. I agree that it would be important to clarify that the rate court is charged with determining reasonable rates. And so, there is built-in protection of the rate court that if the rate court were charged with determining reasonable rates, one element, one benchmark, I'm sure they've looked to would be other deals that were done in the market. So, you know, there is sort of a built-in similarly situated protection, but I think requiring sort of users to go through the steps of having to go through to the rate court is going to be prohibited for the smallest users. And so, I am sympathetic to the sentiments of John, and Rick, I think, also expressed the sentiment, that small stations really would, are exposed if the similarly situated provisions go away.

STUART ROSEN: If I can Ben, just very quick points here.

BEN MATELSON: Sure.

STUART ROSEN: Yeah, we're talking in terms of the similarly situated provision, that's certainly an obstacle is where we see it. But when we're talking about discounts, we're also moving over to a different prohibition in the decree, which says that I can't give you a discount in return for you promising to play a certain percentage of BMI music. So, I just, I don't want everybody to think that it's only the similarly situated obstacle. We think that discount programs like that could work for everybody. It might lower the fees of a user. It would increase the performances, which would benefit our affiliates. So, in that sense, we think it's good for the marketplace. And as to the question of why, you know, we've never brought up discounts. That's the reason. The reason we haven't brought it up is because we can't bring it up.

BEN MATELSON: Alright, thank you. So, I want to move on to a topic that John just touched on, which is transparency of the repertory. And several commenters have raised concern about the ASCAP and BMI databases. And I wanted to get some, some thoughts on that. What is missing today in terms of the content and the functionality of these databases, and should the decrees require a more robust disclosure? And let me ask Tres to weigh in on that first.

TRES WILLIAMS: Sure. Well, this is an area that could certainly use some improvement in terms of transparency. I think there's been a lot of discussion about the databases that ASCAP and BMI put together. And certainly, over the last couple of decades, that's sort of come a long way from "Sorry, I can't tell you," to it's available on our website. I think it still comes short though, of what would be needed to really promote competition with direct licenses. It needs to be machine-readable and in real time. And I think those are a couple of things that sort of get lost in this is we need to be able to, in real time, ping a database, we know who owns it, what the shares are, and feel confident in that, and feel confident that all the licensors are essentially in agreement on that information.

Another problem with this transparency issue really is new releases. If you think about the songwriting process, which as a huge music fan, I just love the idea that songwriters sort of get together in the studio and work late into the night and come up with something they think is a real big hit. And the next day it's on the radio. And I think that reality really makes it difficult to understand who, and in many cases, the songwriters themselves haven't even agreed on who owns what share. So, I think these are just real-world examples of what makes sort of transparency, A, really important that we sort of get the information as quickly as possible and in real time, like I said, and not something that I have to go onto the website and search a database manually. And so, that idea that it's really underpinning all of the things that I think we're going to spend a little bit of time talking about direct licensing and being able to take advantage of some of the alternative forms of licenses, which I think today, the kinds of licenses that have been offered as alternative forms are effectively illusory because you can't save money unless you licensed such a large portion of the catalog at such a large discount. And I think there actually have been publishers that have talked about those disincentives to direct licensing. So, these are the kind of things that would really, transparency is one of the things that would underpin a program like direct licensing. And, we're not talking about hundreds of songs, we're talking about millions of songs. So, it really does need to be sort of machine-readable, automated in real time, updated with accurate information.

I'll give one more example of, you know, just in the last 24 hours, I spent a little bit of time preparing for this panel searching ASCAP and BMI's database, just to get a little idea of how things are progressing because I know they've been spending a lot of time working on the accuracy and reconciling those databases with the other databases out there. And interestingly, I looked up a couple of GMR writers and both ASCAP and BMI's databases sort of inaccurately reflect that those writers are unaffiliated. So just a couple of examples of where there's not great information out there and it's not accessible in a great way that would facilitate direct licensing.

BEN MATELSON: Right, thanks. Let me, let me go to John for his thoughts. Do you agree with Tres? And then I'll throw it over to Stu to respond to some of these issues. So, John, you go ahead.

JOHN BODNOVICH: (Feedback) Okay, thanks Ben. Yeah, I agree to a large extent. I think if there's agreement, right, ASCAP and BMI recognize there's a need for greater transparency in the database, and I know there's value to the industry and to businesses and other licensing organizations that have called on Congress to create a neutral, reliable comprehensive database, as Tres mentioned, that machine-readable, updated in real time, and accessing new… by the licensees or third-parties…if they build out their own businesses on that. I think that one of the issues that we have with our current state of affairs, just from a practical perspective, of are you or an organization like Jack Daniel's… In the case of Jack Daniel's, right now you can get a license and you've had a license… And I think in this day and age, when we talk about the advancements in technology, hopefully we're getting there.

I have to say I was a little perplexed yesterday hearing about the reconciliation engine that was being created. It's funny, three years ago on Sunday, July 26, ASCAP and BMI announced the database and they announced the creation of a new comprehensive music rights database to increase ownership transparency for performing rights licensing, and that great's… And it was supposed to be ready for the fourth quarter of 2018 and it'd already been worked on for a year, and that's all good. But here we are four years later and now we're waiting for a reconciliation engine at the end of the year. I'm not trying to disparage their hard work, but I don't think it's enough. We need something that's larger, more comprehensive… And that database, that reconciliation engine… that takes into consideration the repertoires… or data from SESAC, GMR, or any of the other PROs… And we know now that it will… fractional licensing and that might not be as helpful as it could be. So, you know, again, I think that's kind of where we fall. It's going to be a good thing. I think everyone would benefit from it, all businesses, songwriters included. And that's why we would like to see one that's neutral, usable by third parties, robust, and captures as much data as possible.

BEN MATELSON: John, there's an echo on your…

RICK KAPLAN: Ben, now it's hard to hear you.

BEN MATELSON: John, you had a little bit of an echo on your audio, so we're having trouble hearing you. Let me go to Stu and hopefully you can figure out that audio issue. Stu, you want to go ahead?

STUART ROSEN: Yeah, I think John was just saying that our databases were perfect and he relies on them all the time. I'm pretty, I think that's what I heard. Let me start with something Tres said, and he was talking about how he went on our site and he couldn't find information on GMR. I think he put the finger, maybe inadvertently, on the problem in this discussion, GMR ought to be the definitive source on GMR information. And I guess my question to the group and to the DOJ is why should the failure of BMI, assuming we have a failure, to provide accurate information on GMR, be a consent decree violation? Why should that be the burden of our affiliates to finance? I just don't see how that becomes our obligation. As I see our obligation, it's to make sure that a user knows what they're buying when they buy a BMI license. And to that point, we've met that challenge and we've been doing it, as I said earlier, for decades, without any consent decree requirement. We started with paper books that might've been out of date before the ink was dry. We moved to CD-ROMs, and we moved to electronic databases and machine-readable is certainly

something we're looking at and we'll get to eventually, but right now would BMI and ASCAP are doing together again, not required by a decree, is to work on our Songview database, which we're really excited about. It's an incredibly difficult undertaking to take two separate databases that have operated under two separate approaches and combine them into one reconciled view. But that's exactly what we're going to do. So, I think everybody wants good data. We're striving to provide better and better data all the time. That to me is a different question in a different discussion, then to whether a consent decree requirement ought to be in place to have us be essentially custodians for industry-wide information.

BEN MATELSON: Anyone else want to weigh in on that?

TRES WILLIAMS: Yeah. I mean, I guess I just say it's a little disconcerting to hear BMI sort of say it's not our problem on transparency. I think that it, like I said, it's an underpinning of direct licensing, it's an underpinning of promoting competition in this space, it's the reason that, at least in one of the consent decrees, it's required. You know, so I think sort of strengthening that and making sure that the databases are accurate, and it's something that the parties, that the licensee community can rely on. You know, I think it was said in some of the panels that the MMA, the creation of the MLC, has it should help to improve that. And I think we're optimistic that that will go some way towards improving the situation. But, you know, look, it's been a long time. We've been talking about this a long time. I think everybody, I think everybody knows what we need to do. It's just a matter of getting serious about doing it. And it really remains to be seen sort of what the MLC comes up with.

RICK KAPLAN: I think this highlights too… Go ahead, Stu.

STUART ROSEN: That's not what I said. And if we're talking about transparency, transparency about what? We are fully transparent at BMI about our own data, and, not only that, we stand behind it with our indemnification provision, once you sign a BMI license. So, we may be talking about what you want to have information about, but when it comes to the boundaries of BMI, we're fully transparent.

RICK KAPLAN: And Stu, as long as that identification license covers folks who because of fractional licensing now have, is a piece that is GMR or is SESAC, and they do what they could to acquire a license but couldn't do it. And that, I mean that's, that's really important. I think this also highlights with conversation you and Tres were having, I think it's interesting, why you think that if there was any changes to the decree that should be broadened to include GMR and SESAC so that everyone's under the same set of rules. I think that would be important and maybe would lead to this collaboration that's just essential for, as Tres said, direct licensing, or even just to make sure that you don't run afoul to copyright laws. I see you agree, Stu.

PETER BRODSKY: Ben, can I just chime in at the end of this conversation?

BEN MATELSON: Yeah, please do.

PETER BRODSKY: You know, like ASCAP and BMI, Sony/ATV also makes all of its information available. We've been doing that on our website for seven, eight years now, I think at

the least. It's got all the relevant codes, it's got the songs splits and things like that. And we update it as much as we can. I think Tres' example, sure. Real time updates is the gold standard, but that example of a bunch of musicians and writers coming up with a song in the middle of the night in the studio and having you on the radio that day, as much as we'd like to have the information up that next day, the song splits in today's world, there's a good chance they're not going to be settled that next day. And you'd rather wait than have the wrong information up there. So, I think ASCAP and BMI and publishers like Sony/ATV, do our best to get the most accurate information up as fast as possible. But you're working within this constraints of a creative environment.

BEN MATELSON: Thank you, Peter. Let me move on to another topic, which is the four core principles approach that ASCAP and BMI have talked about quite a bit yesterday. And I wanted to get the perspective of the licensees and our publisher representative. What are your thoughts about this four core principles approach and what, if anything, is missing from your perspective? And Rick, I know you talked about this, can you give us your views on this?

RICK KAPLAN: Sure, thanks. First, just to make sure this is out of the way, I think Mike or Beth talked about this yesterday, if the core four principles or any core is based on a sunset, which is really a termination of the decrees, that's something that is just simply unjustified. There's no, as we've talked about, there's no more competition today than there was in 1941 or 2016, which is really the relevant metric. So, anything that's tied to the sunset, just it's not workable because six months from now, or six years from now, it's still an anticompetitive enterprise, the PROs.

But putting that to one side, and looking at these core four principles, some people call them like a skinny down decree. We, and first of all, very much appreciate ASCAP and BMI attempting to work towards something they feel like can capture certain important features of the current decrees. And I believe they're making a very good faith attempt to do that. I do want to say, however, that I've not met, talked to any licensee, including NAB, who has found the core four principles sufficient by any means. They're still falling far short, but it's a good faith attempt. I think it's something getting to your question, that it's something worth thinking through, but again, it has to still address the very clear anticompetitive effects.

Just to highlight a few things for discussion quickly. You know, we talked about similarly situated, that's dropped from the core four, so that that's missing, and as you heard, licensees have talked about, that's a very important piece. It also eliminates the through-to-the-audience requirement, which is critical for radio TV stations. The reason this was put in is because the PROs before could charge at imposed tolls, sort of, at every step in the distribution chain, and charged for the same thing. So, through-to-the-audience, that is a critical requirement that's missing as well.

We also have some concerns over the proposal to remove the decrees open membership requirement. We believe that will result in the proliferation of yet more PROs, which again, it's just more, it's not more competition, it's just more opportunities to violate the copyright laws by having to cover off more licenses at supra-competitive rates. That's a concern. The skinny degree proposals that we've heard about also that are in the public, also in the core four, it also eliminates the prohibition on licensing rights other than performance rights. And there just is something that we have to think through. And I think the message here is this is all very complicated. So, it really has to be worked through. It's not going to happen in a roundtable, but there is a danger that we

have to worry about of anticompetitive leveraging if this restriction is lifted, because it will allow PROs to say, to potential licensees, well they can't have the performance rights and they don't take the mechanical rights too. So that's something that, again, I know that's what was a concern in the past. And it's, again, that's still the same concern that's out there. Again, not as prohibitive, but something that needs to be thought through very carefully. And the last one that's not there, we just talked about in detail, that's transparency. We believe that's essential. If you don't know what you're getting, Senator Smith said this yesterday, if you buy something and don't know what you're getting, it's really impossible to be held liable for it, but under the law we are. So, we think that needs to be a part of the discussion as well.

BEN MATELSON: All right, thanks, Rick. Let me see if John, hopefully your audio is getting better, do you have anything to add to what Rick said?

JOHN BODNOVICH: I'm not sure if I'm, I'm not hearing the echo, so hopefully no one else is.

BEN MATELSON: I think it's good now.

JOHN BODNOVICH: Okay, good. Sorry about that. I don't have too much to add to what Rick had to say. I do think that with the proliferation of PROs, we really should be looking at a framework that brings everyone kind of under the same antitrust guardrails, as opposed to going away from them. But I, you know, something that I'm trying to square, we're in a highly competitive business, my members are in a highly competitive business. They compete every single day for customers with the bar across the street, or the restaurant downtown or whatever it may be. And we're talking about transitioning these four pillars or a skinny decree, and I'm curious what the argument is in terms of how that promotes competition that benefits consumers, in particular. You know, it was mentioned yesterday, I think by NMPA, about it benefiting ASCAP and BMI, obviously it would, they're the ones who put them together, but, and again, I would echo what Rick said, I follow them for that. And I think that is a good faith effort, and I think it's part of the conversation. That's good, but I just wonder what that gets at the end of the day that's what we're trying to do here. You know, it's the consumer at the end of the day is, or end user is what we're looking at. So, I don't know, that's kind of where I am on that issue.

BEN MATELSON: All right, thanks. Thanks John. Let me, let me ask Peter to weigh in for the publisher perspective. Is anything missing? Is anything missing?

PETER BRODSKY: Yeah.

BEN MATELSON: And then I'll have to Stu respond.

PETER BRODSKY: Well I think most people know what I'm going to say. I mean Sony/ATV is supportive of the four-core approach. We'd like it to be a five-core approach, which is the ability to withdraw digital streaming for the reasons we discussed here, and that are discussed on seems like every panel. But, we want five cores.

BEN MATELSON: Stu, go ahead.

STUART ROSEN: Is that me? I'm sorry, I couldn't hear you.

BEN MATELSON: Yeah, yeah. Do you want to respond to any of these points?

STUART ROSEN: Yeah, I'll try to tick off a few pretty quickly. Through-to-the-audience, I think the proof is in the pudding that BMI provide those kinds of licenses well beyond what we're required to do under the decree. Rick mentioned the, the open membership and his nightmare is that there will be a large number of other PROs, all of which he thinks is going to have monopoly power. I think if you take that to an extreme, that makes no sense, but in any event, I, again, come back to the idea that it's not the job of the BMI decree to prevent or introduce or limit other competitors from coming into the marketplace. And I find it very odd the idea that if BMI is the monopoly that Rick's been saying we are, that he wants to concentrate yet more affiliates, more members in our business. It just seems to me to be counterintuitive. Multiple rights, I think was mentioned. I think it's important to note that our proposal is either going to work or it won't work, but it's certainly we're not going to make our affiliates grant us rights they don't want to grant this, and we're not going to make customers take rights they don't want from us. We're not leveraging our performance right reported power into other businesses. It is an additional competitive option. It's a way that smaller publishers might be able to compete with some of the larger publishers, because they may lack the resources to individually pursue licensing multiple rights, but we can do that on their behalf. We see it only as procompetitive for the marketplace.

BEN MATELSON: Well, I think we have time for one or two more issues. So, I'd like to try to get those in. One addition to sort of this four-core approach that we haven't talked about yet is the proposal to change the interim fee provisions of the decrees. And, today, the court has to pre-approve interim fee payments, and ASCAP and BMI want to make interim fee payments a condition of getting a license upon request. And so, I wanted to hear views on whether that makes sense and should ASCAP and BMI have more authority to set and collect interim fees without involvement of the rate court. And Tres, can I ask you to respond on that?

TRES WILLIAMS: Sure. You know, the current structure for the immediate licensing followed by the determination of a fee really provides the right incentives for the PROs to get new fees in place. I guess I'm just worried that sort of dropping, or amending that requirement just risks not being able to get a license because we can't agree upon what the interim fee would be. And that sort of is contrary to what the purpose of that license upon request provision is. You know, I've heard arguments that companies go insolvent, or go out of business before interim fees are set. I understand that point of view, but I haven't seen any evidence. I'm not sure maybe the panelists are going to present some evidence about that today, but in terms of iHeart, you know, as an established business, it's not a risk that I think is a concern for businesses like ours. But by the way, I mean, most of our business, the interim fee is essentially a rollover of the prior fees. It's sort of how things have worked historically. So, this is really about the protection for smaller businesses. And again, sort of going back to the point I made earlier about innovation, facilitating innovation without the fear of not being able to get a license.

BEN MATELSON: And Peter, what are your views on this?

PETER BRODSKY: I mean, for us, interim fees are really crucial. I mean, to the extent that the requirements to grant a license upon request remains in effect and the rate court system remains in place, we think ASCAP and BMI have to have the ability to demand interim fees. It's just too good to be true. If you walked in the door for a license, and you get a license that it could be years before payments are made with the, how long it takes in the rate court system. And that's not just theoretical. I've seen it happen where years go by before you're paid by companies that are actually building a business off of the back of music publishers and songwriters. We just don't think that that's what the consent decrees were designed to protect. So, interim fees are extremely important.

BEN MATELSON: Thanks. Stu, did you want to respond to any of the points that Tres was making?

STUART ROSEN: Yeah, I would, a couple. One is the whole idea about our proposal is to stop having fights over what the interim fees should be. Our proposal is automatic. If you're a prior BMI customer, pay what you paid us the last time; if you're a brand-new customer, pay what your competitors are paying. It's simple. It's easy. And it's fair because we've lost literally a million dollars on some licenses where people have applied, used, and gone out of business. The other thing, Tres, and I love you, but I got to mention that the radio industry litigation is proof of why we need this. When we we're negotiating a new license and you applied the radio, the RMLC applied for an interim, excuse me, for a rate court license, the RMLC instructed its users not to pay us, that we were in the interim phase, and simply don't pay BMI. And that shut us out of potentially over $140 million a year. It shouldn't have had to come to that. And I think the RMLC was betting that we were not going to go to court on this because as you know, rate court's expensive, and our choices are go to rate court or sit there and take it. We did go to rate court. And once we'd got to the point where this was become a real dispute, the RMLC folded. They paid us what they should have paid us from day one, which is their fees under the prior license. We're trying here to eliminate disputes. We think that music users, any good, solid paying music users should want this because it's unfair for their competitors to suck their customers out and not pay a dime to BMI. It doesn't work for anybody.

BEN MATELSON: All right, thanks Stu. Let me just, I think we can squeeze in maybe one more question here. And I wanted to just, since we've talked a little bit about the rate court, I wanted to get perspectives on, you know, is the rate court working well for you and can anything be improved about it? And is there a way to impose greater market discipline on prices within the rate court structure? And let me ask Peter first, if he has any thoughts on that.

PETER BRODSKY: Well, I mean, the rate courts are, I think, the least practical way of resolving rate disputes. They're extraordinarily expensive and time-consuming. The only ones that really benefit are the lawyers and we're all here lawyers. I understand and support why ASCAP and BMI, and why that's part of this core four approach. It is important to licensees, but right now that the reasonableness standard that somebody mentioned a few questions ago, I don't think that really accurately reflects a rate that would be arrived in a free market negotiation. We've got a new provision. We've got the MMA has given me some hope because now evidence of benchmark deals in the marketplace, or prior deals in the marketplace, will now be able to be introduced into evidence into rate court proceedings. And hopefully that's a step in the right direction, as long as

we're going to live with this system. So, something approximating a fair market rate can be achieved.

BEN MATELSON: All right, thanks. Rick, do you have any thoughts on rate court?

RICK KAPLAN: Yeah, I mean, the reasonableness standard is something that's used all the time by courts in antitrust litigation. That, I don't understand, I don't really comprehend why that's not something, you're looking to arrive at a fair rate, why that's not the standard, that works well, it's important. And it's important that the reasonableness standard be applied for in a competitive market, not an unconstrained market, right. An unconstrained market will allow those with monopoly power to exercise it. So, in a competitive market, and that's worked well. It has been essential because again, it's really in the interest. It's not about Stu or anyone else at BMI and ASCAP, it's in their interest to try and drive the rates up as high as possible, so they're going to ask for the highest possible rate. And for the court to look at what is reasonable, again, this is not some foreign concept that no one has any experience with. It's well-worn and that's essential. And that is working well. And you know, of the things we shouldn't change, that certainly is one.

BEN MATELSON: All right. And let me give Stu the last word on this issue. Any thoughts on this?

STUART ROSEN: Yeah, thank you. We think rate court works reasonably well. We don't think it works as well as free-market negotiations, but on the road to deregulation, we're not looking for, other than the interim fee modification, any changes. I think you measure the success of rate court as much by the cases that never get there as the ones that go to trial. It is a reality when both parties are staring at the bills that we get from our outside lawyers. I'm waving to them right now. You know, it is a real factor that you take into consideration. And so, I think, it works as well as it does. I don't have a particular problem with the standard that's applied. I don't want you to hear that I'm equating that with free market negotiations, because we're definitely not, but as a model for as long as we'll keep it and preserve protections, as we work towards deregulation as modified by the MMA, as I believe Peter said, we're fine with it.

BEN MATELSON: Alright, thank you. I guess I had one follow up that was suggested based on some of the discussion yesterday and Stu, could you tell us anything about whether BMI is planning to make public a proposed revision to the consent decree? And also, can you tell us a little bit about when you'll be releasing some details about the Songview project that was discussed yesterday? I don't know if you could give us any more detail on those things.

STUART ROSEN: Yeah. Regarding the modified or the draft modified decree, I think there's going to be a time when we're certainly going to have to disclose that for everybody to consider. To be candid, we've tried first to see if this is a model that might fly with some of our key users. I think everybody thinks an ideal solution would be to come to the DOJ and say, "Here's something that we all can live with." And before we get everybody's opinion, we thought we'd get a few opinions for. So, I think there'll be a time when we're going to disclose that to a larger circle, but not just yet. On Songview, I think you heard mentioned yesterday that we're working towards a launch by the end of this year, I'm going to leave it to my corp comp department and folks who know the project better to get into all the, all the nice new features and functionalities. But it's a

real thing. It's been a long process and we are hopefully months away from being able to share it with you.

BEN MATELSON: Okay. Thank you. It looks like we are nearing the end of our allotted time. So, I do want to take a moment to thank everyone. I think this has been a very interesting discussion and I really appreciate all the thoughtful contributions that our panelists made today. So again, thank you for being here. So, I think that will wrap up our panel. So, thank you again.

RICK KAPLAN: Thank you.

JOHN BODNOVICH: Thank you.

KARINA LUBELL: Great. Many thanks to you, Ben, and to your panelists for that fantastic debate on some important provisions in the decrees. I guess we'll now take a 10-minute break so that we can begin our economist panel at 2:20 p.m. Eastern Time. Thank you.

Session 5: Economists' Views and Wrap-up

- *Dr. Adam B. Jaffe, Brandeis University*
- *Dr. Kevin M. Murphy, University of Chicago*
- *Moderator: Dr. Jeffrey Wilder, Acting Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice*

KARINA LUBELL: Welcome back everyone. We'll now begin our final panel of the workshop, featuring the views of prominent economists who studied the music licensing market. The panel will be moderated by Dr. Jeffrey Wilder, Acting Deputy Assistant Attorney General for Economic Analysis at the Antitrust Division. Please proceed, Jeff.

JEFFREY WILDER: Thanks Karina. So as Karina just said, my name is Jeff Wilder. I'm the Acting Deputy for Economics at the Antitrust Division. We are fortunate to have two panelists with us today, both of whom have substantial expertise in the economics of music licensing. First, let me introduce Professor Adam Jaffe of Brandeis University. He submitted a white paper on behalf of the Television Music Licensing Committee. He advocates in favor of retaining and possibly expanding portions of the decrees. Over the years, Professor Jaffe has testified for local television stations, cable television channels, and background music services in rate disputes and litigation against PROs. Our second panelist is Professor Kevin Murphy of the University of Chicago. Professor Murphy submitted a white paper on behalf of ASCAP. Professor Murphy advocates for removing certain provisions within the decrees now, and eventually eliminating the decrees altogether. Professor Murphy has testified for ASCAP in rate disputes and litigations over the years in addition to other clients.

So, some logistics before we turn to the discussion. We're scheduled to run to about 3:15. It's a little after 2:20 now. I am hoping we have time to take a couple of questions at the end, but we may frankly just run out of time. If you do have questions, I would direct you to the chat on the right side of the screen where our email is listed. I'll also just spell it out right now. Again, it is ATR.MusicLicensing-Workshop@usdoj.gov. And so, with that, let's get to the discussion.

I'll start with Professor Murphy. So, Professor Murphy, over the past two days, you've heard many opposing viewpoints. That's hardly a surprise, but I think there's two elements or two principles we can all agree on. The first is a blanket license is a very efficient means of licensing many performance rights. And the second is when we do start to aggregate together millions of rights, there arises the potential for the exercise of market power. where participants in our workshop would likely disagree is how well the decrees are working today in balancing these two opposing forces. So, Professor Murphy, my question for you is what light can economics shed on what we've heard at the conference over the past two days, and how can economics help us better weigh the tradeoffs that arise when we start aggregating performance rights? And you are on mute, I believe.

KEVIN MURPHY: A couple of things. First, the idea that collective licensing or broad scale licensing of the type that we've seen in this industry, historically, could be efficient because of the demands that users have and how they use music, as well as the blanket license, which you know, for as well known in economics can allow users to create the most value from a given set of licensed works. I think that's a well understood, as is, you mentioned, the traditional trade off,

while aggregating may be more efficient, it has a potential of create market power. I think the part that's really struck me as I've been listening is that most of the discussion is not about issues that arose because of collective licensing. Whether it's transparency or whether it's, you know, music in a can or whatever else you want to talk about, those issues would exist absent collective licensing. And indeed, it's not clear collective licensing, aggravates those issues in many cases, if any, it mitigates it. And so, it's not so much about this tradeoff we just talked about, at least most of the discussion that I've been hearing.

If you were to split ASCAP into five pieces and BMI into five pieces, and each had one fifth of the portfolio they have today, I don't see which of these issues would be solved, even if that resulted in much lower. And that you can see that in most of the discussion that we just had. People talk about the problems that exist with the smaller new entrants. Clearly that's not because somebody aggregated large amounts of rights and indeed, many of the points that have been made have been about pushing more rights into the larger organizations. It seems to me there is that traditional tradeoff, but that's not what lies behind much of the discussion.

JEFFREY WILDER: All right, now I suspect that Professor Jaffe is going to want to weigh in on this question as well.

ADAM JAFFE: Yeah, thanks Jeff. And thanks for inviting me to participate in this. Let me just say before I start that, as you say, I have in the past spoken and written on behalf of various musical licensees and everything I say today is I'm only speaking for myself. I'm not speaking for anybody else. So, I'd like to pick up on one thing that Kevin said and then made my own sort of observations on the last day or so. I completely agree with Kevin that the issues are not about big PROs. In fact, small PROs that offer blanket licenses, the issues of market power are still there. The market power doesn't arise from them being big. It arises from the fact that they represent, a non-trivial number of individual rights holders. So, I completely agree on that point.

Let me just comment on a couple of things that I've heard over the last couple of days. I've heard a lot about new technologies and I've heard a bit about deregulation as a goal in some abstract sense. And I guess I'd like to just comment on both of those. In terms of technology, I mean, we can sort of dream maybe that someday there'll be algorithms and data processing such that you could imagine, hypothetically, sort of real-time instantaneous clearing of licensee markets done by computers and algorithms, so you wouldn't have to have blanket licenses. You wouldn't have to have PROs. Everything would be done between a rights holder and a licensee title-by-title, second-by-second, and that would be hypothetically a very different world that maybe technology would someday bring about. I don't think that's what we're talking about in the couple of days. I haven't heard anybody suggest that that's really feasible. What we're really talking about when we talk about new technology, as far as I can tell, is that there are new vehicles and new mechanisms for delivering music performances to users, particularly through digital media. And as far as I can see, when I think about the economics of that, they don't really change anything. If you look at the digital licensees, the people who present music performances to users digitally, they look like they want the same things that television stations and radio stations have wanted. So, it's just not clear to me, even though technology has changed, that it's a reason in and of itself, why things need to change.

And in terms of deregulation, I just want to remind us that deregulation isn't a goal in and of itself. It's a means to an end, and the end is increased consumer welfare. You know, when we deregulated airlines and telecommunications, that was after literally decades of studies by economists and others that showed that the old regulatory regimes in those industries where we're raising prices and we're hurting consumers. And I'm not really aware of any empirical analysis that shows that the consent decrees are somehow raising prices or hurting the users of music. So, I'm not opposed to deregulation or talk about deregulation, but let's talk about what it would accomplish, not talk about it as if somehow it's an end in itself.

JEFFREY WILDER: Alright, so unless Professor Murphy has a response to that, I'll go on to the next question I have, which I think actually speaks to this a bit. So, Professor Murphy, in your submission, you noted that regulation was common in industries with "natural monopoly features." Since many users here need access to all music, is this industry a natural monopoly, and is that an important distinction or is that an important way, a useful way to be thinking about the industry and whether regulation is indeed necessary?

KEVIN MURPHY: You know, I don't think it really fits in that traditional sense because you know, first off, not all users fit in that category, but even the users that fit in a category where they're demanding a broad segment of music don't necessarily demand that from a single provider. They can assemble a portfolio from multiple sources. So, a demand for variety is not synonymous with a natural monopoly in the way in which it's being provided.

I did want to follow up on one other thing though, because I think the issues that we've been talking about would exist in the absence of PROs, I mean, they're not unique to the fact that these are intermediaries having multiple rights, or in fact, even if you divided the rights even much more finally, the issues that are being talked about wouldn't go away. In many cases, they might get worse. So, what seems odd to me is that we want to try to solve these through consent decrees with particular providers in the industry. That seems to be when you talk about problems that would exist anyway, a very problematic approach on how to deal with it. Now, deregulation isn't the goal in itself. But the thing that I think was also missed in the discussion is deregulation, competitive markets have something very different than regulated markets. People don't do things... In deregulated markets, it's about mutual gains. I don't do something out of the kindness of my heart. I do it because there's something in it for me, and the ability to gain mutual gains is what drives progress. They're doing it one way today. It's not so much what I gain, or you would lose, it's on net, do we both benefit net? Do I gain more than you lose? That's what's going to happen in a competitive market. And that's what deregulation often prevents because that trade off, if it's not recognized by the court, will not necessarily take place. That's one of the big problems you have in a regulation. And initially deregulation can redistribute between the two sides, but the thing it'll introduce, almost always, is that incentive to take advantage of the mutual gains. And I think we miss that often when we take a very short-run view to deregulations, not in and of itself, but it accomplishes things we may not even yet know we want to accomplish.

ADAM JAFFE: So, I guess I would say that this sector certainly has some features of natural monopoly. I mean ASCAP and BMI and SESAC all have systems that they've created to distribute royalties. They have computer programs that do that. They all spend millions of dollars on that. And those systems are not half as expensive when you distribute it to half as many people. So,

there are some features there. I think on the demand side, more importantly, if you look at the major users, whether they're traditional television stations and radio stations or digital users, it's true that they have licenses from ASCAP and BMI and SESAC, but they're not assembling some variety by doing that. They are just getting themselves the overall blanket protection that they need. They would all rather have only one blanket license, rather than having to go to multiple different organizations to get blanket licenses. You don't see any of them going just to ASCAP and not to BMI or to SESAC and not ASCAP and BMI. So, to me, that looks a lot like there's features of natural monopoly there.

JEFFREY WILDER: Now, do you want to respond to that, Kevin?

KEVIN MURPHY: Yeah. I don't understand it from an economic point of view. The fact that people would prefer a single source if they could get everything they want from that source is not what we would call in economics a natural monopoly. You go to multiple places because different places are good at doing different things. That's why I shop at more than one store. I would prefer if I could get everything from one store at the same price I get now, right. I don't have an intrinsic interest to go to multiple stores.

ADAM JAFFE: But you don't see anybody going to Stop and Shop only. Everybody goes to all of them all the time.

KEVIN MURPHY: Does that mean retailing's a natural monopoly?

ADAM JAFFE: No, no. I meant by analogy in the music sector.

KEVIN MURPHY: Oh, but you…

ADAM JAFFE: Everybody…

KEVIN MURPHY: The people want groceries and they want gasoline and they want all those things, that retailing is a natural monopoly and it's just not what we do.

ADAM JAFFE: I didn't say retail was a natural monopoly. What I was saying is, by analogy, if music was like retailing, we would observe some people who shop at BMI and some people who shop at ASCAP, but we don't see that. They're not substitutes one for the other in any way.

KEVIN MURPHY: They substitute over the long haul. I agree at a point in time, you want variety so you go to both. They have things at one that they don't have on the other, but that doesn't mean they don't compete on the margin and they would compete more in a free market. In a free market, and particularly if it became more advantageous to license, they would compete to get more business. The gentlemen from BMI earlier talked today, somebody said, "Well, you just don't offer a discount." And he said, "Well, if there's nothing in it for me, I can't, I'm not going to offer a discount." But if I could say, "Look, if I give you a discount, I'll get a lot more business." Hey, now we're talking. And that's the kind of thing that happens in a competitive marketplace. It's much more difficult to do in a regulated marketplace.

JEFFREY WILDER: All right. Well, thank you for that. I do have a question now for Professor Jaffe, again, related to that discussion. Professor Jaffe, is there any evidence that entry and expansion by other PROs like SESAC and GMR has increased competition between the PROs and led to better deals for users and songwriters?

ADAM JAFFE: Well, I think there's some evidence that it's led to better deals for some songwriters because SESAC and GMR have offered better deals to recruit songwriters. What they then do is they go, they turn around and they license to the licensees. And basically, what the licensee was getting before, from ASCAP and BMI, to reproduce that, and now also needs a license from SESAC and maybe GMR. And so, the licensees are not getting any benefit out of that. As I said, they're not substitutes, one for the other, the nature, and maybe it's, there's a bit of a chicken and egg. It may be a bit of a result of how the system has evolved, but as the system stands today, you really need broad coverage because you need to try to avoid accidental infringement. And so, the users want it all. It's not variety. They want coverage against infringement. And when it gets broken into pieces, they just have to pay more people more money to get the same thing. So, I don't think they're benefits to the copyright holders. I mean, sorry, I don't think there are benefits of the licensees. There may be benefits to the owners of the compositions.

JEFFREY WILDER: Right. So, let me ask a follow up to that. And that is, to what extent does this entry undermine some of the original efficiency justifications for the blanket license?

ADAM JAFFE: think it does. And I don't disagree with Kevin that having, you know, a bunch of these different PROs, some of which are covered by consent decrees, is not an optimal solution to the problems that we face. I think that, SESAC was sued in private antitrust cases, and it tried to get out by summary judgment. That failed. The judge indicated that there was evidence that SESAC had market power by virtue of the repertoire it had, and then they settled. And how did they settle? They set up an arbitration proceeding, which looks a lot like a consent decree. So, we do have a bit of a patchwork approach to this fundamental problem of collective licensing.

KEVIN MURPHY: I really think we're missing the way in which these kinds of alterations to marketplace work. To me, it's very much like, if you think about rent control. When you have rent control, the guy with apartments says, man this is great. I'm keeping my price down price. You know, prices will be lower because we have rent control. One immediate effect that a very apartment that you used to have, it's going to go up in price. So, look at that direct impact. It's going to be a higher price. But at the end of the day, what does it, how does it affect the marketplace and the incentives that exist on both sides of the market? The point is people will now have an incentive to create more housing that will then benefit users indirectly.

And that's what's so different that you got to remember happens in any marketplace that doesn't happen under regulation. And you know, it's true, if you've distorted things through regulation, it's going to take time to undo that. But I don't see the answer is to do more regulating. The fact that we see people coming in who haven't amassed large portfolios, they're relatively small portfolios out of the total; they're coming in because their opportunities there too, and the market has been distorted in some ways. And maybe if the market was freer, they would have a tougher time because ASCAP and BMI would be able to hold on to more of that business. But it's not, to me, a sign of a good place and you don't want to keep adding to the regulatory environment. You

know, I always say the old adage, if you find yourself in a hole, first thing, stop digging, right? That's the number one thing when you're in a hole, stop digging.

ADAM JAFFE: Sorry, what is the empirical evidence that we're in a hole? I mean, people have done a bunch of studies of rent control and have really shown that it restricts construction of new housing. I know of no evidence that we're restricting the supply of music, that less music is being somehow written.

KEVIN MURPHY: I don't even know if it's about the supply of music. It's about the alternative. People talk about, well, we need new licenses. We need different licenses. We need licenses that allow us more flexibility. That's the kind of things that won't happen very well under regulation. You know, you talk in your paper about, well, I don't license directly because I can't get credit. And that's because the rate court won't give you credit. In a competitive market where you're negotiating with the guy across the table, if you've licensed more stuff on your own, you're going to get credit for it because he's not going to be able to demand what he otherwise could demand because you don't need him as much. That happens in the market by construction. And when you talk about a lot of the things you talk about, they are implications of deregulation. They're not things that are being fought by the regulation. To me, I just was so confused by that.

JEFFREY WILDER: Sorry. Quick question for Professor Murphy. Now Professor Murphy, different types of licensees use new music very differently. As previous panelist have explored, some users have a great deal of choice in the music they use while others have less control and truly need access to everything. How does that observation affect an economic analysis of the market, and should the decrees apply similar similarly to these different kinds of users?

KEVIN MURPHY: Oh, I think that's one of the problems. I think you would expect, given they have different circumstances in a marketplace, for them to end up maybe getting different contracts, or certainly different terms based on their market conditions. We get some of that under the decree. Under the decree, for example, you have the per-program license in television that has pretty wide use that people use to engage in direct licensing. We have other forms of licenses that are available. As I see it, the problem is that's becoming an even more difficult task, right? Professor Jaffe talks about the ability of the court to set a rate. Well setting a rate is one thing, but saying how much this license should cost relative to that license. That's an incredibly difficult task. And one for which outside observers, economists, or courts have a tough time doing. That's the thing that markets do very well. They decide what licenses will be offered based on mutual gains from trade. If you gain more from that license than it costs me, we both have an incentive to get it. And we'll find terms that make it in our mutual interest to do it. Much harder to do in a regulated environment.

JEFFREY WILDER: Any response to that Professor Jaffe?

ADAM JAFFE: Well, I would just say if we're talking about new context, and we're not talking about one television station versus a different one, but we've got a new platform, there's nothing in the consent decrees that stops ASCAP or BMI from proposing some new kind of license that has not been proposed before. All the consent decree does, or I don't want to minimize it, what the consent decree does is say, if they don't propose something that is attractive enough to the

licensees, the licensees have the right to sort of insist on a license and the rate court ultimately may have to set the fee. But there's nothing that stops them from doing something completely new in a new context.

JEFFREY WILDER: All right, professor, oh, Kevin, you had a response?

KEVIN MURPHY: Just a little bit. I mean, it's not a question of stopping them. It's a question is what's their incentive. For example, as was mentioned in the previous panel, similarly situated requirement has an effect of affecting your willingness to offer something different. I'm actually surprised, given the DOJ's general attitude toward things like MFNs and things like that, that are requirement for a similarly situated clause would be something that would be attractive. I'm not saying similarly situated type clauses are bad, per se, but generally you don't think of them as being required. Anyway.

JEFFREY WILDER: Alright, Professor Jaffe, another way in which users differ is that even some users who desire access to wide portfolio have flexibility in how intensively they use a given publishers recordings? One such category may be services that provide background music for retail establishments. Another may be streaming services. Does the ability of ASCAP and BMI members to directly license such users provide a competitive check on blanket license fees?

ADAM JAFFE: Sorry, needed to unmute. Yeah, I think it does provide some competitive check, particularly taken in the context where ASCAP and BMI are prohibited from licensing exclusively, so that you can be a member of ASCAP and still have the option of licensing directly. And as Kevin mentioned, we have things like per-program licenses and adjustable fee licenses, which came about really because of the genuine choice provisions of the decrees. And those have created some opportunities to work around the edges and to get some competition where it works. It doesn't work for everybody, but it does provide some competition.

KEVIN MURPHY: I would agree that the non-exclusive nature of licensing through PROs is an important part. I think I've been on record saying that route, that the non-exclusive nature of licensing really allows for multiple forms of competition. I don't think it's true though, that the decree created adjustable fee type licenses. That is many industries have things that look very much like an adjustable fee license, where you get a discount for using more of my stuff or pay a different price depending on whether you use more or less. Those kind of contracts are very common in many, many industries. They are difficult to do under the consent decree, the way it was originally structured. So, it took some changes to make that happen. I would expect to see those in, in a competitive marketplace. Now, whether people ultimately take advantage of them or use them as a negotiating tool, that's a different question. We do see that all the time where threats to move volume, there are things that people use to negotiate better prices. One thing I would say, though, you got to be careful. That is contracts that involve those types of shifting of business in exchange for discounts, do not imply that the prices off of which they're discounting are not competitive. It's just not the case. As has been clear from the underlying economics, if I'm moving to give you more business, you'll be willing to give me a discount in exchange for that. Any deal at which by me selling about marginal costs has that characteristic, even when prices are competitive where they start. It's just a fundamental aspect of economics.

JEFFREY WILDER: Alright, thank you for that. Professor Murphy, does the current lack of repertoire transparency impede the ability of users to direct license or the ability of PROs to compete for songwriters? What more, if anything, needs to be done to address this?

KEVIN MURPHY: You know, I'm not an expert on transparency. A couple of things I would say, I don't see why transparency is intrinsically tied to PROs even, or collective licensing as a whole. It seems like these transparency issues transcend that. And if we got rid of PROs tomorrow, transparency issues wouldn't go away. And I didn't hear anybody explain how it is the indirect nature of PRO licensing or the collective nature that creates a transparency issue, if there is one. So, that's number one. And indeed, it seems that if anything, the PROs are taking a lead in terms of trying to increase transparency. Transparency, again, it's not my area of expertise, but it isn't also the case of matter in economics that one would have to have all the information to get a competitive marketplace. And in predicting, you don't need to know the details of everything that's in, if you can evaluate the whole. And in many cases, people can make a reasonable evaluation of the whole without examining all the pieces, but that's separate.

ADAM JAFFE: I would agree that, in some sense, transparency is an issue that transcends the PROs. I think the way it manifests itself, however, is that in the world that we're in, where particularly for audio-visual broadcasters and streamers, the music is embedded in a program that has frequently been pre-created, so-called "music in the can" problem, and they don't necessarily know what that music is or who owns it. The issue of transparency does create a problem for thinking about competition between, hypothetically, say different PROs, because the broadcaster that might be thinking about choosing one over another has the problem that if they can't figure out who controls which music that they are already broadcasting, it makes that competition more difficult.

JEFFREY WILDER: So, you just mentioned, Professor Jaffe, the "in the can" problem. Should the decrees be modified to provide more or less licensing at the source? Would such licensing tend to foster competition, reduce holdup, and improve efficiency?

ADAM JAFFE: So, I'm not a lawyer and I don't want to talk about exactly how you would do this in terms of the decrees. But I think it is clear that if more music were licensed at the source, A, over time, that in effect eliminates the "in the can" problem, because then subsequent users of recorded content would basically purchase the right to perform the embedded music as part of an overall license that they're getting for the recording, so you wouldn't have that problem. And if you did have licensing at the source, it fosters competition because at the time a recording is made, they're going to be many more options to think about different works that you might use. Whereas, once you've got the program in the can with the music from many different owners and hard to identify, it makes competition more difficult.

KEVIN MURPHY: I guess, a couple of things I would add. I mean, first off again, it's one of those issues that would exist with no PROs. It was all, just every music was licensed directly by the owners of the copyright. You know, if you had no PROs, this issue would not, you'd probably be worse. It wouldn't be better. So, it's not a PRO issue, let alone an ASCAP/BMI issue that should be addressed in those specific consent decrees. The other is, I think, if we moved towards more of a marketplace and if there's a problem with people getting held up, that incidence doesn't just fall

on the users. A lot of that's going to fall on the guy who produced the product who's going to be able to sell it for less if you have to get expensive rights to go with it. And that would give them an incentive to license upfront. But in a world in which the rate court doesn't give you credit for that, then you lose that incentive. But the loss of incentive is not intrinsic, this ex ante, ex post distinction. Because in lots of markets, I have an incentive to clear the rights for things. I want to figure out I own the land before I build the house, because the guy I want to sell the house to ain't going to pay much for it if it doesn't come with the land. And, we don't have that problem. The guys build houses on land they don't own because they want to sell the house. And, what's happened here is we've become, in many ways, dependent on the regulation that we've had. If you could say, "Well, geez, given we had the regulation, that means we have to keep it, and maybe we have to expand it." I think that's a very tough argument to make because it sort of says, "I'm never going to take advantage of the enhanced flexibility I would have if I could move away from the regulated environment."

JEFFREY WILDER: Alright, thank you for that. Over the past two days, we've heard reference to various types of licenses, including through to the audience per-program and per-segment adjustable fee. Professor Jaffe, are these license types necessary, and are they functioning well today?

ADAM JAFFE: Well, I think actually we've kind of talked about this a bit, so I'll just say, I don't know, necessary is a tricky word. I think they a make the market work better today. They provide a vehicle for competition. They may not be ideal. And Professor Murphy sort of suggests that these things would evolve without the consent decrees. That's not obvious to me.

KEVIN MURPHY: I would say if they're efficient, if there are mutual gains, they'll have a tendency to evolve in a free market place. And you know, the problem is under regulation, you lose that test. You lose that test that their joint gains to the parties because you have so many sitting in the middle who can mitigate the ability to engage in that test. I do think that some of the flexibility that's there is the kind of flexibility that's valuable, and you know, whether it's a per program license and the like, but it should be able to survive on its own merits, not because it's being imposed.

JEFFREY WILDER: So, a related question there, one area where I suspect the two of you may disagree is on the question of genuine choice. So, a long-standing feature of the alternative licenses that we just discussed is that ASCAP and BMI are required to structure them in such a way as to provide, "a genuine choice to licensees." Professor Murphy, in your view, is this provision necessary and is it efficient?

KEVIN MURPHY: Well, if you have a license form that would exist, then it will be a genuine choice. It should be a genuine choice, and it should be priced as a genuine choice because it's efficient. The problem is if you say anything that I can think of should be priced in such a way that it becomes a genuine choice, so somebody takes it, that would allow inefficient contract forms. That's sort of saying, if you invent the mousetrap, it's not a very good mousetrap, you should sell it and sell it at a low enough price that some people will buy it. And that's the problem. Now I'm not saying that's what characterizes the contracts we see, because I think there are other elements of the contracts we see that mirror what we see in other industries. So, they probably make sense.

But the idea that everything should, in equilibrium, be a genuine choice is at odds with economics, because many things should not be chosen in equilibrium and therefore should not represent a genuine choice.

ADAM JAFFE: I mean, historically it was the rate court that sort of forced ASCAP and then BMI to offer some of these alternatives. Now I think you're right, then hypothetically in a world with no, with no collective pricing, if they're good, they're going to evolve anyway. I guess I'm not sure if the alternative world we're imagining is one in which we have no consent decrees and PROs are given an exception to Section 1 of the Sherman Act so they can engage in what they're engaging in, or whether it's one in which we just go back to their subject to the antitrust laws. In which case, I don't know what would emerge, but you'd probably have some antitrust cases, but the notion that we always get good decisions out of private actions, even when they're colluding, I don't think is what economics would support.

KEVIN MURPHY: I would agree that's not what economics would support. Although remember here, we have non-exclusive licensing, but that individuals do have the option to go in other directions. If you have the ability of other people to come in and desire of them to expand, like we see, with SESAC or GMR or other people, or even the publishers who want to license some of their stuff themselves, that gives us the ingredients that would undermine any attempt to have higher than competitive pricing. So, I think we don't want to presume that there's never an antitrust problem and I certainly would not advocate any of immunity from antitrust. I'm not a lawyer, but as an economist, I don't see immunity as an answer here, but I do think that we see other marketplaces, in marketplaces where people want wide variety, whether it's sound recording, video, and other places, those markets work without the same restrictions we see here.

JEFFREY WILDER: Alright, thank you. So, we, so the two of you just mentioned the rate court. I'd like to do a little bit deeper dive on the rate court here, which will be the final question we have. And then I'm going to go to a couple of questions I have from the Q&A. So, we've been talking about direct licensing and alternatives to blanket licensing. To close, let's return to the pricing of the blanket license itself, and specifically the role of the rate court. What role, and I'll open this up to both of you, I'll start with Professor Jaffe. Professor Jaffe, what role should the rate court play in setting prices and how close does the rate court today get us to market rates?

ADAM JAFFE: I think the rate court plays an important role in setting prices, because I think, in the absence of the rate court, I don't see why the various parties that own these rights would necessarily choose to compete rather than to collude. Now you can say, if they collude, then they would be subject to the antitrust laws, but then we just have private antitrust cases instead of rate court. I mean, that's what happened with SESAC basically. And it was settled when they agreed to arbitration that looks a lot like rate court. So, I don't see how we gain by not having rate court, and instead, having a bunch of private antitrust cases running around. I think that rate court isn't perfect and it's hard to sort of set rates by that kind of mechanism. We do it in other places. I mean, other copyrights settings have copyright boards. We have patent cases where judges set reasonable rates because there are various kinds of compulsory licenses. So, I don't think it's an impossible task. And I think it's maybe not the ideal, but it's not obvious to me that there's something better.

KEVIN MURPHY: I guess I would say Professor Jaffe mentioned that rate court is important for setting prices. I've think they have been very important for setting prices. They, in fact, have been the major determinant of pricing in many cases because they really don't have market benchmarks to look at. And even things that look like market transactions are all done in the shadow of the rate court. If you have a license in which the supplier has to give you a license and the remedy is not to do without the product, but to go to the rate court and get a license fee determined by the court, that's a market in which the court is exerting enormous influence on the setting of rates, even in no case ever goes to court. That is very hard. And that's one of the promises of direct licensing is that would give you some actual market benchmarks, even for those who are subject to a rate court. But in order for them to be market benchmarks, it has to be a system in which it's either party can say no, that's what we mean by a market-set rate, where a buyer and seller are willing, and willing means I can say no. It's not just willing to make a deal. It's willing and able to not make a deal.

Those are important components. And that's why having more direct licensing, even if you maintain a rate court, is going to give you a more useful benchmark, a real market benchmark for thinking about what rates ought to be and what competitive market rates will be. And even if that leads to higher rates initially, doesn't mean that's where they end up. When you think back to things like railroad deregulation and alike, users said, "Oh man, all the rate regulation is my friend. It keeps my rate below what that railroad wants to charge me." But when you deregulate, it creates incentives in the marketplace that change the dynamics that can end up getting people lower rates. It's not a direct, it's like the ultimate Chinese finger trap. You think you're pulling your fingers out, but ain't coming out because the indirect effects are very different than the direct effects. And I can't stress that enough.

JEFFREY WILDER: Alright, thank you. I do have a question that came in, which I think is a pretty important one, which is, and I'll start with Professor Murphy for this. So, from the perspective of the individual licensee, are songs substitutes, or are they compliments, or does it vary depending on the licensee? And is the answer to that question important to how we think about the economic analysis here?

KEVIN MURPHY: Yes. And I actually spend a fair amount of time teaching this in my class. They are both, and that's not unusual. Most products that are related to one another have aspects of both substitution and complementarity. And that is definitely true in music, but it's true in, I give them in my textbook, I give numerous examples, of farming implements and cars and all kinds of things, that are both substitutes and compliments at the same time. And that's the situation we have here. And that's what markets… Again, that's the point. You try to take advantage of the both substitution and complementarity as a buyer and as a seller. And that's why you need flexibility in how you structure your contracts. And that's often where the mutually beneficial deals come from, being able to take advantage of one selectively. So, I would say they're both. Many users want to combine music, that makes them compliments. We have the choice over what to combine, that tends to make them substitutes. And you're right, not all users are the same. Some users, substitution is more dominant. For others, complementarity is more common. But almost for all of them, there's aspects of both.

ADAM JAFFE: So, I would agree with that, but I would actually also add that at least for some licensees, it's important to realize that what they need is, in some sense, something more than

songs. They need protection against accidental infringement. If there's music in a commercial, if there's music in the background at a football game, they're subject to statutory penalties if that gets broadcast and they don't have the rights to broadcast it. And that's, Professor Murphy was talking about the right to say no, they don't have the right to say no as a practical matter. They can't operate without that protection. And they need it, in effect, in a blanket mode because otherwise they don't know when they're going to be infringing.

KEVIN MURPHY: And that is due in any way to collective licensing? Or is that about the copyright law? Would that be true absent collective licensing?

ADAM JAFFE: It is. It is. No, I agree with you. It's due to the copyright law, which is one of the reasons why we want to have collective licensing, but then once we have collective licensing, we should recognize that the people who are engaged in collective licensing have market power.

KEVIN MURPHY: I don't understand because there's a missing step that you're saying, I need this whether they have market or not.

ADAM JAFFE: I didn't say that.

KEVIN MURPHY: Now when they go into collective licensing, they gain market power, and therefore, they should be responsible for solving some problem that, you would say, existed even if they didn't have market power. So, it seems to me, them having market power has nothing to do with your argument. It's outside the chain of logic.

ADAM JAFFE: Okay, I don't think that's what I said, but let's go on because we're losing time.

JEFFREY WILDER: Yeah, we are. So, we are running out of time. I should thank the two of you for the discussion today. It's been great. But before we close, I want to give each of you the opportunity, if you want to say a few words or reflect on anything you heard to sort of sum up, or to reflect again on the conference. It's not necessary at all because I think, frankly, we already covered quite a bit of ground in the panel.

KEVIN MURPHY: I think I've said pretty much what I wanted to say.

ADAM JAFFE: Yeah, me too.

JEFFREY WILDER: Okay, perfect.

ADAM JAFFE: Thank you very much.

JEFFREY WILDER: Yeah. Thanks so much for this. I've seen the two of you speak before, but it's great to have you in the same virtual room, of sorts, going back and forth. I love to see the debate. I'm sure that everyone else at the workshop would agree with that. So, with that, I will close the panel.

KARINA LUBELL: Great, thank you, Jeff. And thank you, Doctors Jaffe and Murphy, for that lively debate. To conclude our workshop, we'll hear some parting remarks from Renee Augustine, who's Deputy Assistant Attorney General at the Antitrust Division. Renee, the mic is yours.

Closing Remarks

- *Rene Augustine, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice*

RENE AUGUSTINE: Thanks, Karina. The ancient Greek philosopher, Heraclitus, once posited that the only thing that is constant in life is change. His observation certainly describes the music industry. Since the ASCAP/BMI decrees were first put in place in 1941, we have seen many changes. We have witnessed an evolution in the way in which music is delivered to users thanks to technological innovation.

In fact, songwriters themselves have recognized the inevitability of change. Many of them have written lyrics on the subject. I am sure many of them come to your mind. A quick search of my own music collection reveals dozens of song titles about change.

In this spirit, it is our obligation, as antitrust enforcers at the Department of Justice, continually to assess the remedies we have put into place. We must take care to ensure that they continue to serve their intended purpose of protecting competition.

From 1890, when the antitrust laws were first enacted, until the late 1970's, the United States frequently entered decrees that never expired. As a result, many old decrees were left on the books without regard to whether they continue to be appropriate in changed circumstances.

Under Assistant Attorney General Delrahim's leadership, the Division launched a review of all the pre-1979 legacy judgments on the books. Every decree is evaluated to ensure that it continues to serve competition. This workshop has been an important part of this evaluation process with respect to the ASCAP/BMI consent decrees. These decrees affect not only the music industry that has grown up around them, but everyone who enjoys listening to music.

During this workshop, we've been enlightened by our esteemed panelists and speakers. They've offered their views on whether the decrees in the current form still give songwriters and composers the benefit of robust competition.

We have heard from some of the greatest talents in the music industry, Leann Rimes, Pharrell Williams, and Jon Bon Jovi, who shared with us their experiences as songwriters within the current licensing system. The decrees have a profound impact on the creators of music. As Leann Rimes reminded us yesterday, without songwriters and composers, we wouldn't have music. And to quote Pharrell Williams, "without songwriters, there is no business of music." Competition in public performance licensing is essential to ensuring that songwriters and composers are free to innovate and enjoy the fruits of their work.

In short, this two-day workshop has achieved its goal as was announced by Assistant Attorney General Delrahim yesterday: competition. The workshop has further enhanced our understanding of competition in the licensing of public performance rights. Fully understanding the implications of the decrees will enable us to determine the best path forward.

One thing I've learned about remarks on video and about closing remarks is that those are better when they're short. So, let me end by thanking all of our panelists, and keynote songwriters, once again for their contributions to this workshop.

A transcript and a recording of the workshop will be available on the Division website in the coming weeks. On behalf of the Department of Justice, thank you for joining us.