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To: ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject: PROS DESTROY MUSIC

2/3/2014

Last night, the staff at RGRS got together over beer and pizza in an effort to understand just what in the hell we are trying to accomplish by waging a standoff against one of the most (if not THE most) powerful 'organization' in the music industry: ASCAP.

Rubber Gloves is a small venue across the tracks in Denton, TX. We regularly host local and smaller touring artists performing their own original material. We don't make much money; never have, but it's ok because we love what we do, and have done it well for the past 17 years.

It seems pointless and even suicidal to attempt to strike back against ASCAP. They have a seemingly bottomless cash supply, master legal team, lobbyists on Capitol Hill, politicians in their pocket, support from the biggest celebrities, and most importantly; the largest membership of songwriters and musicians in the world.

ASCAP is a beast, it's reach is vast, and it has a stake in practically every imaginable aspect of music today. To narrow down our issues to one area hasn't been easy: reading up and making sense of the endless articles, blogs, lawsuits, financial statements, etc; has been exhausting. Cold hard numbers and sensitive information are sometimes hard to come by. Ultimately, we had to focus on one area in the ASCAP domain; a single "category". Then we had explain our position clearly if we are to garner any understanding and support for our cause.

Our grievances with ASCAP lie in the area of "live performances", and "live performances" as they apply to live music venues only. Whether we agree or not with ASCAP on how other categories (mechanical, broadcast, internet audio & music video, TV & film, etc) are governed is irrelevant to our core interest.

That said, here's our official stance (in caps; no less, for dramatic effect):

WE REFUSE TO COMPLY WITH THE CONTRACT SET FORTH BY ASCAP UNTIL A FAIR SYSTEM IS ENACTED, AND THE PROCESS OF COLLECTION, DISTRIBUTION AND PAYMENT IS MADE COMPLETELY TRANSPARENT TO ASCAP MEMBERS AND TO ANY ENTITIES WITH WHOM IT CONDUCTS BUSINESS.*

*In layman's terms: we aren't going to pay ASCAP a dime until they get their shit straight.

And now, we attempt to answer any questions we imagine our detractors or ASCAP representatives would (and have) thrown at us:

-BY NOT PAYING ASCAP, YOU'RE HURTING MUSICIANS!

Maybe the top earning touring artists on the ASCAP roster, but we doubt they notice. Besides, they don't deserve that money, it's not theirs. And by not paying ASCAP, we're definitely not hurting the smaller touring and local artists that play here. What's really hurting any artist that hasn't made ASCAP's top tier is the closing of hundreds of smaller local venues nationwide that've stopped hosting live music altogether

because they weren't able to afford ASCAP's 'blanket license' fees. Some venues, having been sued, have closed for good. That's sad and detrimental to ANY artist because smaller live music venues are absolutely essential to ANY music community.

-STOP WHINING. IT'S PART OF THE BUSINESS. SUCK IT UP AND PAY THEM!

When you're in business, you try to avoid being forced into any contract. And you absolutely don't sign a contract you find unjust and unfair.

-ASCAP'S BLANKET LICENSE IS LESS THAN THE COST OF THEM SUING YOU!

Maybe. Probably. But it's the principle. Being threatened with a lawsuit by someone (with the law on their side) because you don't agree with what they're trying to force on you is unethical, at best. Fundamentally, it's nothing more than legal extortion. We will not be intimidated with threats.

-YOU'RE DON'T PAY ASCAP BECAUSE YOU'RE JUST A GREEDY VENUE AND WANT THE MONEY FOR YOURSELVES!

No, we HAVE paid ASCAP. Somewhere in the neighborhood of \$10,000.00. And that's \$10,000.00 that should have gone to the songwriters and musicians that play and tour though Rubber Gloves. Instead, it went to the top touring acts ASCAP counts as members. And in 2013, Bon Jovi was ASCAP's #1 touring act. That's who the money went to: Bon Jovi, and the rest of the top earners.

-I'M AN ASCAP MEMBER, AND THEY PAY ME. I WOULDN'T BE ABLE TO SUPPORT MYSELF IF IT WEREN'T FOR THE ROYALTY CHECKS FROM ASCAP!

And that's great! ASCAP is doing exactly what they should be doing. But do you know where that money came from? As ASCAP likes to say, "Follow The Money". So, let me ask you and every ASCAP member this: how much do you make from "live performances?" Look at your last pay statement from ASCAP. On the very last page, look under the section "No Surveyed Performances During This Period For The Following Categories". Is "live pop concert" or "ASCAP Onstage" two of the categories listed? Yes? That's because:

- a.) Nobody was covering your songs.
- b.) ASCAP isn't monitoring your songs.
- c.) ASCAP is taking money in the name of "live performances" from venues. You weren't a top grossing tour act in their roster, so you get nothing.

But you know who does? Bon Jovi. Bon Mothertruckin' Jovi.

WHAT ABOUT 'ASCAP ONSTAGE'? I'M AN ASCAP MEMBER, WHEN I PLAY, I SUBMIT MY SETLIST TO THEM, AND I GET A CHECK!

-Again, that's great. Sounds fair. So why can't ASCAP include the venues in this program?

and my personal favorite:

WHILE YOU'RE UP ON YOUR SOAP BOX, WHY DON'T YOU CALL YOURSELF WHAT YOU REALLY ARE: A THIEF (this was an actual quote from an ASCAP representative)!

-Who's the thief? The venue that nurtures the artist, or the one stealing from both of them?

Cooperation works better than intimidation.

In closing:

Will ASCAP ultimately squash us like a ripe cherry tomato?

Probably. Rubber Gloves doesn't have any money. The legal fees associated with just one lawsuit is enough to wipe us out completely.

Will anything change between venues and ASCAP?

Probably not. In the current system, they've rigged it to make every dollar they possibly can. But in doing so, they've needlessly pitted songwriters & musicians against venues. They've closed the very places that are the lifeblood of any artist not in the top rungs of their roster. And foolishly (for them), they're eradicating the training grounds of possible future ASCAP members.

Organizations that were originally created to protect the interests of artists are absolutely needed. Unfortunately, ASCAP's power has gone unchecked, they've abused that absolute power, and the result is ultimately harmful to everyone (including ASCAP) involved.

Doing something bad in the name of doing something good is wrong.
But recognizing something bad in the name of doing something good; and not righting it, is deplorable.

If we go down, we'll go down fighting with all we've got. If you're going to get your ass kicked, make sure you cause some damage. Maybe if you're lucky, you've inspired someone else to do the same.

Never let anyone own you.

In the words of last night's closing toast, "Here's to going down in flames!",

Rubber Gloves Rehearsal Studios
Denton, TX

Nobody would argue that songwriters don't deserve to get paid for the compositions they create. Unfortunately, ASCAP (and the other PROs); the very organization(s) enacted to protect and collect on behalf of these songwriters, has severely abused the law and their power. Royalties collected by ASCAP in the name of 'live performances' hardly ever, (and almost never) reach the deserving party, and instead are put in a general fund (after ASCAP takes a cut) to be distributed amongst the top earners in their roster.

ASCAP requires all venues to purchase a yearly 'blanket license' at ridiculous and overly inflated prices. This 'license' is sold as a way for the venue to obtain access to the ASCAP catalog, but is little more than 'protection money' against the assured lawsuits ASCAP will pursue (a single infraction can carry a \$150,000.00 penalty) if the venue fails to comply. What transpires is little more than 'legal extortion'.

This is wrong and needs to change. If small and mid-sized live music venues showcasing artists performing original compositions are to survive and thrive, ASCAP and the other PROs need to adopt a transparent system of collection and distribution, and be subject to third party audits. Royalties collected in the name of an artist must go to that artist. And ASCAP must expose, address, repair and resolve the antiquated, unjust, and unfair system before it ultimately destroys what it claims to create: MUSIC.

Quotable:

"Unfortunately, most PROs in the United States do not survey the smaller venues where indie bands typically perform. Instead, THEY PUT MONEY THEY COLLECT FROM THESE VENUES INTO A GENERAL LICENSE FUND THAT IS DISTRIBUTED TO PRO MEMBERS BASED ON FEATURED PERFORMANCES ON RADIO AND TELEVISION." - discmakers.com

"I know nothing about the live performance royalty system. I will say this: I find it curious at best, criminal at worst that they're just now paying out/tracking live performances since I know for a fact they've been taking

their fees from venues for decades. Hell, I STILL HAVE A NUMBER OF MY SONGS PLAYED OUT BY A FEW DIFFERENT ACTS AND I HAVE YET TO SEE A SOLITARY DIME FROM THAT. SERIOUSLY- ZERO DOLLARS. AND I'VE BEEN A PROFESSIONAL SONGWRITER FOR OVER 20 YEARS NOW." - ASCAP member via email

"I am an ASCAP member. This means that I should collect money, based upon their system of the tracking of 'use' proportional to said 'use' of my music. Problem is, their bullshit system is the biggest one-sided bell curve you've ever seen...In the end, I, or anyone else 'represented' by ASCAP make no money proportional to what I sell or what of mine is used unless or until I'm as big as Mariah Carey or who-the-fuck-ever. In fact, all those publishing songwriters affiliated with ASCAP who aren't on that monetary level actually make money for those who are. If I go from selling 10,000 albums a year to 40,000, along with the predictable increase in 'use' (such as jukebox plays and the like), I WILL NEVER SEE A PROPORTIONAL INCREASE IN ROYALTY PAYOUT FROM ASCAP. INSTEAD, THE EXTRA MONEY I EARN, ALONG WITH THE THOUSANDS OF OTHER ARTISTS ON THE LOWER RUNGS EARNING PROGRESSIVELY MORE, WILL GO THE TOP 2 OR 3 PERCENT OF ASCAP ARTISTS ALREADY EARNING MILLIONS A YEAR FROM THEIR VAPID SHIT." - Brent Best, ASCAP member