

From: Maneesh Pangasa <maneesh.pangasa@██████████>
Sent: Tuesday, June 24, 2014 2:04 PM
To: ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject: Music Licensing Study Comments
Attach: DOJ Music Licensing ASCAP BMI Comments .doc

To Whom It May Concern at the U.S. Department of Justice,

Per the Department of Justice's request for public comments on music licensing I am submitting the following comments to go into the record of DOJ's music licensing study.

I would like to start off by stating that I've always found it kind of funny and yet frustrating as a consumer that when the music industry sells me a CD or mp3 they feel cheated they don't get a royalty payment every time I listen to their music and provide some background before answering the DOJ's questions.

Back in 2006 the Recording Industry Association of America was feeling bullied by Apple which refused for a long time to offer variable pricing for music downloads sold on its popular iTunes Music Store which has since expanded to sell music videos, movies, TV shows and other media including apps.

The RIAA for a long time felt cheated that they could only make money once from iTunes Store sales while Apple was making money off iPod sales. The RIAA numerous times tried to get Apple to share a percentage of its hardware sales with them but Apple resisted.

They even tried to press Apple to launch an internet radio service to rival Pandora Radio from which they could make recurring revenues. Yet for the longest time Apple which offered liberalized music rights favoring consumers refused their demands.

Only when Apple was able to get the labels to dump DRM or copy protection in their music did they consent to variable pricing. The main reason the labels wanted variable pricing was to experiment with selling songs for more than 99 cents. Since variable pricing was enacted music sales have gradually declined. Some would attribute this solely to the rise of streaming services like Pandora Radio, Spotify and iTunes Radio.

Yet while streaming may have had a role to play in the decline of recorded music sales it is not the only factor. Now variable pricing could have offered some benefits for consumers by enabling cheaper music to be sold. Most of my music purchased on iTunes since variable pricing went into effect was for 69 cents a track or 99 cents.

As iTunes music sales have in the last year have steadily declined Apple finally agreed to the labels earlier request to offer a streaming internet radio service providing music labels, songwriters and artists a recurring revenue stream.

The RIAA made the mistake of not offering legal music downloads sooner than they did and not offering its own online distribution platform enabling Apple to dominate its industry - in fact before Apple came along they allowed peer 2 peer file sharing on the early Napster to take off. Apple was smart to insist on allowing 99 cent song sales initially and to allow music to be sold per track. Album CDs always came bundled with filler songs. There were only 1 or 2 good tracks in an album. iTunes

popularized the purchasing of digital singles. As a result the music industry once used to making hundreds of millions of dollars on album sales is now making less money.

Also it was not too long ago the RIAA used its massive profits to bribe radio stations to only play corporate owned music. This payola or pay to play system benefited musicians and labels associated with the RIAA but made it harder to discover new independent music. For many years the RIAA has even been under paying most artists. Sure there are a few wealthy musicians like Madonna but most are in debt to the labels.

Why continue to perpetuate their exploitation? Better some say to download and share music freely and then send the artist a buck - cutting out the middle man.

After dozens of lawsuits against music labels over payola and some music activists pushed greater peer 2 peer file sharing as a way to breakup payola the music industry has seemingly abandoned payola. Now they want internet radio stations to pay them royalties.

Unlike Apple Pandora makes no money on hardware or song sales. They only make money delivering ads to users streaming music for free and from paid subscribers paying \$4.99 a month for ad free higher quality audio with more number of skips.

As such U.S. District Judge Denise Cote recently ruled that Pandora could not and should not have to pay significantly higher royalty payments to ASCAP and the RIAA. As such Pandora recently had to increase the subscription fee for Pandora One subscribers from \$3.99 a month to \$4.99 a month to absorb higher royalty payments. Pandora also ended its yearly subscription plan and now charges on a month to month basis. Pandora cannot afford to pay substantially higher royalties without drastically raising the cost of their subscription. Furthermore, as most people listen to internet radio for free most of these internet radio services are actually losing money.

Pandora is yet to make a profit for its shareholders. How can they be expected to pay as much as Apple which offers other products/services both hardware and software related when Pandora only makes money on ads and Pandora One subscriptions.

Another issue of music licensing is region locks. The inability of new online services to offer music restricted to another region. Let's say when Apple opened the iTunes Store and it was U.S. only if they wanted to sell music from European labels that had not signed on with the U.S. iTunes Store they were out of luck. When the iTunes Store launched in European countries like the U.K. imagine what if British music labels agreed to only sell their music on the U.K. iTunes Store not the U.S. iTunes Store.

You will find my answers to your questions in the attached Microsoft Word document.

Sincerely,
Mr. Maneesh Pangasa



Mr. Maneesh Pangasa



Chief Litigation III Section

Antitrust Division

U.S. Department of Justice

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Whether consumers are using Apple's iTunes Store to purchase music, using an iTunes Match subscription to add their ripped music tracks from album CDs and other sources to iTunes in the cloud and listen to ad free iTunes radio, Microsoft's Xbox Music store and Xbox Music Pass subscription service, Google's Play Music Store and Google Play Music All Access radio the selection of digital music services keeps getting better from a consumer perspective.

I would say the Consent Decrees from 1941 are still needed to protect consumers in the new digital music marketplace and innovators using technology to disrupt old business models for distributing media. The RIAA when it sued to shut down ReDigi an online music upstart that offered to resell user's digital music, which claimed validity under the fair use doctrine countered that the music we buy as a consumers does not belong to us. We have no rights to resell digital music the way we can resell a used album CD, a used DVD or Blu Ray. ReDigi lost at court but was able to survive as it was not a broad ruling against ReDigi just a narrow ruling against part of its service.

ReDigi was able to change the way it removes music sold on its service from a user's computer to make the process more secure. That being said I had serious reservations about the UMG EMI merger a few years ago and think allowing media companies to merge as a means to increase their negotiating power with service providers like Apple's iTunes or Pandora and to bully them to accept higher royalty payments is not good for upstarts or for consumers. Pandora is a much smaller company than Apple and cannot afford to pay higher royalty payments like Apple can.

Therefore I believe the consent decrees against ASCAP and BMI to this day serve an important purpose and their treatment of Pandora should be taken into consideration. Yes artists, songwriters and labels deserve their commission from music streaming and music sales. Pandora, which a few short years ago was, lobbying unsuccessfully for the Internet Radio Fairness Act to protect internet radio from excessively higher royalty payments but is now focusing on lobbying the Copyright Royalty Board on this issue deserves protection from ASCAP and the RIAA's racket. Their demands for excessively higher royalty payments from Pandora are tantamount to extortion. If they get their way Pandora will become unaffordable to most consumers and they will actually end up killing internet music streaming in the name of increasing internet music streaming royalties.

Their corporate greed could destroy Internet radio. First they disliked Apple having so much control of distribution of their product but if they threatened to leave the iTunes Store could lose money as most people buying music online shop Apple's iTunes Music Store. They sometimes made empty threats to leave iTunes but were unable to and hated Apple's control over their industry. Now they hate Pandora because Pandora does not pay them as much as they can get from iTunes Radio.

As a consumer I am not well versed unfortunately in all aspects of the Consent Decree. Perhaps some aspects of the Consent Decree if outdated and no longer necessary can be removed. However, I would exercise caution as removing oversight and regulatory compliance mandates that are pro competitive and still benefit the industry could backfire. I'll let the public advocacy groups ("public interest groups") commenting on this matter provide their legal opinion on what to do about individual aspects of the Consent Decree. I do think in some shape or form the Consent Decree should continue to remain in force. I think given the bad behavior of the music industry towards Pandora it would be good to keep some aspect of this Consent Decree in effect even now.

I would suggest making modifications to the Consent Decree that strengthen it and make it more useful in the digital era. Modifications that require ASCAP to confer with Justice over proposed royalty hikes they seek from the Copyright Royalty Board might be a good place to start.

Justice should also confer with the Copyright Royalty Board and try to mediate differences between ASCAP and Pandora Radio or other Internet radio services whenever possible. No I do not think the Consent Decree should be modified to allow rights holders to license their performance rights to some music users but not others. The reason being this could open a Pandora's box for them to further discriminate against Pandora. It would become even easier for them to exclude music from online services like Pandora that pay less royalties than giants like Apple. That being said if you do allow them to license performance rights to some music users but not others they should be required to structure grants and/or licensing deals in such a way smaller outfits and startups in the digital music business can also afford to operate. Royalty payments should be reasonable and fair for smaller outfits like Pandora.

We think of Pandora as a big Internet radio firm because of its popularity and number of listeners but compared to firms like Apple it makes much less in revenue and is a smaller company. It's only product/service is its Internet radio service.

No I do not think the rate-making system set up by the Copyright Royalty Board should be changed to a system of mandatory arbitration as that may give the labels and ASCAP undue power to dictate the amount of royalty payments all music services regardless of size have to pay. I cannot see how such a change could benefit a company like Pandora.

Unless a service like Pandora under the new proposal has a fighting chance to lobby in it's best interest and that of its subscribers for a slightly lower royalty payment than the bigger outfits (it may be higher than they currently pay but lower than ASCAP would like) that works for all interested parties equally and fairly (not just the big boys) I cannot see this working out well for consumers or small Internet radio outfits like Pandora. As for what procedures should be set to expedite resolution of the disputes I'll leave that to the public interest groups and the involved parties to help determine but believe the system should be fair and just to all. Not disproportionately benefit ASCAP at Pandora or Spotify's expense but serve all parties well.

Sincerely,
Mr. Maneesh Pangasa