

**From:** Alan Titus <Alan.Titus@ATR.USDOJ.GOV>  
**Sent:** Friday, July 25, 2014 12:45 PM  
**To:** ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>  
**Subject:** Comments on behalf of Artichoke Joe's

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To Chief, Litigation III Section, Antitrust Division:

I write on behalf of Artichoke Joe's, a cardroom in San Bruno, California, to comment on whether the antitrust consent decree with BMI continues to protect competition.

Artichoke Joe's has a combined bar and dining room which is within, but separated from, the cardroom. The bar/dining room has four walls with an open doorway to the cardroom and has its own designated occupancy load. The two areas are not just physically separated, but sonically separated as well. Patrons in the cardroom cannot hear any noise from the bar/dining room.

Artichoke Joe's has televisions in the bar, and though the sound is usually muted, once in a while, it is turned on, usually to listen to news or sports, not to play music. The three main music licensing agencies have all demanded that Artichoke Joe's pay for a music license or risk being sued if caught playing music. ASCAP and SESAC have agreed to provide licenses based on the occupancy rate in the bar, and Artichoke Joe's has purchased licenses on this basis. However, BMI has refused to set the rate based on the occupancy of the bar and instead has demanded that the license be based on the occupancy of the whole cardroom floor, claiming that is required by the consent decree. The occupancy limit in the cardroom is far higher than the limit in the bar. We have attempted to explain that the area is separated, that people in the cardroom could not hear music played in the bar, and that in fact card players would object to music in the cardroom as a distraction.

We believe that this is monopolistic behavior, and that BMI is trying to leverage their rights to a license for music played in the bar/dining room by forcing Artichoke Joe's to pay for a license for the whole cardroom where music never is played or heard. We believe this is anti-competitive and we would like to see the decree with BMI amended to limit such abusive, monopolistic behavior.

We appreciate your consideration of these comments.

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