

From: Ed J. Clark - www.edclark.com [REDACTED]
Sent: Wednesday, August 6, 2014 9:31 AM
To: ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject: The Single Exchange Takes My Right to Negotiate

The Consent Decrees Violate Individual Rights.

I am an American songwriter, a member of BMI. I'm submitting this comment on my own behalf in opposition to the ASCAP and BMI consent decrees. I believe these government actions essentially are a compulsory license outside of the Congress and take away songwriters' rights to due process of law.

The Single Exchange Takes My Right to Negotiate

The government limits my ability to participate in a free market; it takes my property rights without due process or just compensation; it even limits my kind of speech (public performance of my songs) as I must participate in this process or effectively forgo compensation when I perform my songs in the public square. I know that there's always the theoretical possibility of a direct license outside of the consent decrees, but as a practical matter, I can tell you that is very rare because it is rarely offered.

I am not a lawyer or a constitutional scholar but I believe the consent decrees violate the American social contract for many reasons, not the least of which is that in practice songwriters are singled out for the government's scrutiny before they have done anything except engage in speech and create songs. When you are on the receiving end, this feels like a kind of writ of attainder. Allow me to explain.

A) Typically when we limit the rights of individuals in the manner prescribed by the consent decrees one of three things must occur:

- 1) Legislative action by elected officials.
- 2) Judicial proceedings finding a particular individual (not a class of individuals similar to that individual) guilty of something.
- 3) The individual must consent to have his/her rights limited (usually to avoid judicial proceedings or because they participated in an election).

As an individual songwriter, the consent decrees effectively compel me to submit to this process. At least the compulsory license in the Copyright Act is a legislative action by elected representatives and if I don't like that rule I can work to get someone unelected. Under the consent decrees, generations of songwriters are powerless to stop the government from taking our rights without that legitimacy—for decades. I do not understand how the Department of Justice has the authority to force us to submit to this process.

Thanks,
Ed
Ed J. Clark

songwriter

<http://edclark.com>

<https://Facebook.com/EdClarkSongwriter>

ed@edclark.com

cc: Mary Knapp