

From: Josh Gruss <[REDACTED]>
Sent: Monday, August 4, 2014 10:43 PM
To: ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject: Public comment on ASCAP/BMI Consent Decrees

My Name is Josh Gruss and I am BMI songwriter. I make my living from the publishing copyrights of songs.

Do the Consent Decrees continue to serve important competitive purposes today? Why or why not? Are there provisions that are no longer necessary to protect competition? Are there provisions that are ineffective in protecting competition?

The consent decrees do not enhance competition whatsoever. The other copyright, the master recording, does not have consent decree restriction. And so if that copyright can be licensed in a free market, then obviously the other copyright can as well without diminishing competition whatsoever.

I don't seem to find an issue with competition in the music service space? Spotify, Google, Pandora, Rhapsody, Beats, Rdio, you name the service, there are plenty of them, and the easiest part of their licensing is the song, because the rates are set by the government, and songs can be used right away, even without the license in place. The master recording gets paid in excess of 10x what the song makes because it does not have consent decree restriction. The other copyright that these services must license, the master recording, is licensed in a free market. Why shouldn't the other copyright, the song, get licensed in the same manner? Any music service can license songs at an artificially low rate, not even sign the license and have a great business with loads of revenue and profits. The government is subsidizing these businesses at the expense of the american songwriter. Our music, our songs, do not earn fair rates in the current system. When Pandora plays a song 36 million times and the songwriter earns less than a \$1000, that is not fair. (I have seen this in a friend's BMI statement recently). We are getting paid virtually nothing for our music and it is because these consent decrees do not allow for fair royalty rates to the songwriter

The consent decrees are simply horrible for us songwriters. Why can't we negotiate in a free market economy? Why are we subject to government restrictions put in place 70 years ago? It's crazy.

What, if any, modifications to the Consent Decrees would enhance competition and efficiency?

The consent decrees should be modified to allow us songwriters the chance to earn a free market rate for the use of our songs.

Regarding efficiency: Why should our property rights be restricted for the sake of efficiency? ASCAP and BMI have incredibly efficient systems and licensing procedures in place already. The problem is not efficiency, its establishing fair rates for songwriters who are the only professionals I can think of that has the government determine their livelihood. FREE MARKET for our songs!

Regarding competition: there should be more competition to use our songs! Don't worry about restricting the plethora of platforms who are paying us virtually nothing to use our songs. Songwriters, a small group of artists, are being bowled over by corporate giants like Google, and Pandora. They don't pay us nearly enough.

How easy or difficult is it to acquire in a useful format the contents of ASCAP's or BMI's repertory? How, if at all, does the current degree of repertory transparency impact competition? Are modifications of the transparency requirements in the Consent Decrees warranted, and if so, why?

It is so easy to license from ASCAP or BMI. Businesses only have to go to 2 sources to license all the repertoire. Just go to BMI or ASCAP's websites and you'll see how transparent they are and how easy it is to license their repertoire. That makes it so easy for a licensor of music to obtain a licence. On the same token, it allows songwriters to collectively license, so they don't need to do the impossible work of licensing to all these establishments individually. So the system works well. But that doesn't mean that songwriters shouldn't earn a non-market rate. Songwriters are currently paid artificially low rates. Pandora pays 9 cents for every 1000 plays. One songwriter friend has a hit song that gets paid 36 million times a quarter on Pandora. His earnings from Pandora in that quarter for his 50% of that song? \$850. It's entirely unfair. Their websites have forms that make the process so easy. Virtually every bar, restaurant, radio station, you name it, if it uses music it Go to ASCAP or BMI's website and search their database of songs. There is full transparency. Name any song registered with either BMI or ASCAP and using their repertoire database I could tell you all the stakeholders in that song in 2 minutes. There is full transparency and I don't know why that is even a question or a worry. This question of transparency is ridiculous. ASCAP and BMI could not be more transparent already.

Should the Consent Decrees be modified to allow rights holders to permit ASCAP or BMI to license their performance rights to some music users but not others? If such partial or limited grants of licensing rights to ASCAP and BMI are allowed, should there be limits on how such grants are structured?

Does the government restrict authors of books, where they can sell their books. Does the government restrict film makers, which outlets and channels they can license their films? Does the government restrict Microsoft from licensing their software however they choose?

Why can't I choose which services I want my song to be on? I personally hate Pandora because I know they will do anything to screw a songwriter.

I personally would prefer Pandora not to have my music. In the current system, that is not possible unless I leave ASCAP or BMI and I have to do their job (one by hundreds of employees) all by myself.

Should the rate-making function currently performed by the rate court be changed to a system of mandatory arbitration? What procedures should be considered to expedite resolution of fee disputes? When should the payment of interim fees begin and how should they be set?

The rate court function is a farce. One judge in New York makes all the decisions. That is a form of dictatorship and is completely un-american.

The system is also prohibitively expensive for songwriters. We're a small business in comparison with the corporations that challenge us in rate court. The dollars spent to fight in court (it's not event court –it's one single biased, unfair judge), come straight out of songwriters pockets, making it even harder to get by

Should the Consent Decrees be modified to permit rights holders to grant ASCAP and BMI rights in addition to “rights of public performance”?

The other types of rights are easy to collect directly from the licensors.

Mechanicals come from record companies and synch comes from advertisers, film, tv and video game companies. A much smaller field of payors than what you find in public performance. I would say songwriters do not need ASCAP and BMI for this function.

ROUND HILL MUSIC

JOSHUA GRUSS CEO

400 MADISON AVE, 18TH FLOOR. NEW YORK, N.Y. 10017

OFFICE + 1 212.380.0071

JG@ROUNDHILLMUSIC.COM

WWW.ROUNDHILLMUSIC.COM