

From: Monica Corton <mcort[REDACTED]>
Sent: Friday, August 1, 2014 5:14 PM
To: ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject: Department of Justice - Consent Decree Comments from Next Decade Entertainment, Inc.

August 1, 2014

Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW, Suite 4000
Washington, DC 20001

Dear Chief, Litigation III Section:

My name is Monica Corton and I am the Senior Executive Vice President, Creative Affairs and Licensing for Next Decade Entertainment, Inc., an independent music publishing company located in New York City. Our clients range from very well-known catalogs like the music of the band Boston and Harry Belafonte to emerging writers like Marcy Heisler and Zina Goldrich from the Broadway community and Martha Redbone from the Martha Redbone Roots Project. I have been working in the music publishing business for over twenty-five years in a wide array of responsibilities that include licensing all uses of our works and overseeing the distribution of royalties.

I am writing to you to share my concerns about the effectiveness or rather the ineffectiveness of the Consent Decrees which have governed ASCAP and BMI since 1941. Although they both have been amended since then, the last amendments were issued prior to the advent of the digital age (in the case of BMI) and the radical recent changes in digital rights licensing (in the case of ASCAP). New technologies have dramatically changed the way people obtain and pay for music. With this sweeping change and consumer's limited interest in purchasing music either in physical or digital formats, an entire income stream for songwriters and publishers has been reduced significantly. Now consumers want to stream their music, but the current rates that are paid for streaming do not reflect the true value of the music which is causing a massive change in the livelihoods of our community. Meanwhile, some players from the digital technology companies have used all of their legal guns to manipulate the Consent Decree system to their advantage. We have a totally inefficient negotiating system for performance rights licensing via ASCAP and BMI's Consent Decrees. ASCAP and BMI are forced to grant a license for all works even if the potential licensee does not give all of the details of how their service works and generates income. No other form of music publishing licensing functions like this. Further, if the potential licensee does not like the rate that has been determined by ASCAP or BMI, they can drag out a rate court proceeding, pay a nominal licensing fee that is an interim fee and potentially not pay a licensing fee that reflects the true value of the music for multiple years until the judge who is in charge of each of these rate courts determines a final fee. The time and money that these proceedings require cannot be offset by the income generated from these digital licenses and this again hurts music publishers and songwriters.

As a result of this practice by certain digital companies, the music publishers tried to find a business solution for their songwriters by pulling their digital rights licensing from ASCAP and BMI. This was unprecedented, but we really believed we had no choice under the circumstances. The rate court judges then ruled that we could not do this. I personally tried to pull three catalogs, but was stopped in the process by the ruling. This is an untenable situation and we need a better system for sustaining ASCAP and BMI. I don't believe any of the music publishers would have sought a withdrawal if they felt that ASCAP and BMI could negotiate rates in the digital arena that reflect fair market value. Further, if we want our digital licensing business to grow, we need to ensure that we have a functioning system for new potential licensees that can efficiently determine a fair market rate.

I would like to see three changes in the Consent Decrees for ASCAP and BMI. The first is a move to an arbitration system whereby disputes could be resolved within a ninety day window by a three person panel. The panel would include a judge chosen by the PROs, a judge chosen by the licensee and a judge chosen by these two judges. If we moved to this system, it would eliminate the necessity of an unfair interim fee structure and result in a quicker and hopefully more balanced

decision making process when disputes arise. The current system does not set out a timeframe for the resolution of disputes and allows licensees continuous use of works as they drag out the rate court process. The second change would be to modify the Consent Decrees to allow music publishers to permit ASCAP and BMI to license our works to some music users, but not to others. Because PROs do not have the ability to say "no", licensees know they can use our works under any circumstance and some take advantage of this fact. Our goal as owners of music rights is to find as many places to exploit our works as possible, but if a licensee is unwilling to pay a fee that reflects the true value of the music, we have very little capacity to do anything about it under the current structure. We all want to generate income for our songwriters, but we also have an enduring responsibility to ensure fair and competitive compensation. The third change I would like to see is permission for the music publishers to withdraw their digital rights licensing from the PROs as these licenses often involve multiple rights that would be more easily licensed directly from the music publishers.

With regard to the question of allowing the PROs to license additional rights beyond performance licenses, I am very wary of this change. I think the strength of the American licensing system is the division of rights that are controlled in a blanket system. We need a robust system that captures the full value of each right that is licensed. If there are multiple parties involved in the blanket side, it will hopefully keep the value of each right at its fair market standing. That said, such additional rights licensing should be at the option of the music publishers and there should be assurance that the PROs will not condition their licensing of performing rights on obtaining additional rights from music publishers. In addition, in order to determine a fee in a multiple rights system, you need to understand the range of viable fees for the rights being utilized. These have always been determined by the music publishers directly and I don't believe that this should change.

Please do not hesitate to contact me if you have any questions regarding my position on the matter at hand.

Best wishes,
Monica Corton
Senior Executive Vice President, Creative Affairs and Licensing
Next Decade Entertainment, Inc.



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