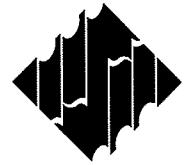


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VIA ELECTRONIC MAIL

Wixen Music Publishing, Inc.

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

Ladies and Gentlemen:

Thank you for the opportunity to comment on the issues surrounding the proposed “100% licensing” of performance rights by ASCAP and BMI under the Department of Justice consent decrees. While many of the questions posed by the Antitrust Division are best answered by ASCAP and BMI and their respective licensees, Wixen Music Publishing, Inc. respectfully submits the following, more general, comments:

While joint copyright owners of musical compositions indeed have certain rights with respect to non-exclusive 100% licensing, these rights are rarely used in practice. In fact, songwriters and joint copyright owners frequently enter into what are known as “co-publishing/co-administration agreements” amongst themselves, which explicitly prohibit 100% licensing and state that each co-owner may only license their respective share of the copyright.

And in practice, even if a “co-publishing/co-administration agreement” does not exist, almost no-one feels comfortable licensing a song in the absence of all co-publishers agreeing to the license. The market has adapted to this approach, especially in the synchronization and mechanical license world, and the benefits to the creators, publishers and licensors far outweigh those rare instances when such practice presents a complication.

The three primary reasons behind the longstanding practice of prohibiting 100% licensing are:

1. Additional Commissions, Delayed or Unpaid Income. Joint copyright owners frequently do not share a common administrator for the licensing and collection of their royalties and license fees. Under a 100% license, royalties/fees for all co-owners are typically first paid to the licensing co-owner’s administrator, which, in turn, is responsible for distributing the remaining co-owners’ shares to their respective administrators. This means that the non-licensing co-owners’ shares often become subject to double commissions and delays of three to six months due to passing through two administrators’ hands instead of one.

Given the established fractional licensing system the music publishing industry historically has and currently operates in, it is rare for a copyright co-owner or its administrator to have accurate and

complete payee information for the other co-owners. This, along with the added complexity of differentiating between and properly allocating income received under a fractional license and income received under a 100% license for the same song, increases the likelihood that non-licensing co-owners will go entirely unpaid. This has become an alarming and pervasive issue under the 100% license offered by the compulsory provisions of §115.

2. Lack of Control. Songwriters' views may change over time. Band members may change or be fired. While songwriters choose their co-writing partners, copyrights are often sold and transferred by inheritance so future owners may not have the luxury of choosing their co-owners. Prohibiting 100% licensing helps to ensure the long-term good of a song is served by preventing ill-advised, desperate or vengeful licensing of the copyright by one co-owner.

3. Lack of Transparency. The further downstream one is from the end licensee of a copyright, the more obfuscated and less detailed accounting statements become. Further, if 100% licenses are available from any co-owner, it is very difficult to conclusively determine if a particular use is in fact licensed, which co-owner licensed it, and if the accountings are being calculated properly.

Compelling ASCAP and BMI to offer 100% licenses will create additional unique and wide-reaching issues. Not only will songwriters and co-owners frequently incur delays and the double deduction of operating costs by both ASCAP and BMI, ASCAP and BMI's distribution policies and royalty calculation methodologies are very different. This will lead to songwriters and music publishers being underpaid or unpaid for uses which they would have otherwise been paid for under the existing fractional license framework.

Further, from a creative standpoint, 100% licensing could drastically change music itself by influencing how songwriters choose their writing partners. Will an ASCAP-affiliated songwriter choose a BMI co-writer if it means one of them will get 9% - 15% less royalties due to the deduction of operating costs by both PROs? Will they also choose to forgo the use of samples for the same reason? Will they choose to collaborate at all? Will the quality and quantity of music suffer as a result?

The dire straits publishers and songwriters have found themselves in due to the consent decrees have forced them to seriously consider, and in some cases, actually withdraw from ASCAP and BMI. Significant direct performance agreements are already being made outside of ASCAP and BMI. New performing rights organizations have started up and are quickly gaining membership. If ASCAP and BMI cannot adequately represent their members' interests due to consent decrees, non-market rate court decisions, and now potential 100% licensing, more and more members may well terminate their memberships resulting in a much more fragmented and complex performance licensing landscape.

The ownership of the majority of today's popular music is fractionally split. Due to this, 100% licensing will cause ASCAP and BMI to offer licenses which cover, to a large degree, the same repertoire. ASCAP and BMI will no longer be able to differentiate themselves by the songs and songwriters they represent. The only way they will be able to compete is by offering lower-priced licenses which will inevitably cause a race-to-the-bottom as they struggle to maintain revenue levels and stay relevant.

Everyone loses with 100% licensing. ASCAP and BMI lose the ability to compete based on the merits of the catalogs they've meticulously built over the last 100+ years. They lose songwriter and music publisher members who've become disillusioned by the inequities of 100% licensing and the consent decrees. Businesses and broadcasters lose the current relatively centralized fractional performance licensing system as members flee from ASCAP and BMI. Legacy artists and songwriters lose the re-invigoration that a sample use might bring to their catalog. Songwriters lose income, transparency, and timely payment of their royalties. They lose their freedom to choose their collaborators without careful consideration of the ramifications of 100% licensing. And, perhaps most importantly, the world forever loses the music those would-be collaborations would have born.

Respectfully,

Wixen Music Publishing, Inc.