

DOWNTOWN

MUSIC PUBLISHING

This brief is being submitted on behalf of Downtown Music Publishing (“DMP”) and in response to the Department of Justice’s (“DOJ”) requests for comments with respect to whether ASCAP and BMI (the “PROs”) can continue to license on a “fractional share” basis - the current accepted practice in the industry - or whether the respective consent decrees between the DOJ, and ASCAP and BMI (collectively the “Consent Decrees”) should be drastically overhauled to mandate a concept of “100% licensing.” We firmly believe that the best and fairest means to compensate songwriters for their hard work is to leave the present licensing mechanics intact; any change to this practice could have devastating consequences for thousands of songwriters and members of the publishing community.

DMP is a full service music publishing company with its headquarters in New York City and with offices in Los Angeles, Nashville, London and the Netherlands. We operate our business in a challenging and ever changing climate. Adopting a 100% licensing scheme would be a seismic shift in the way our business operates and it would have calamitous results for all parties involved.

Currently, and for many years, our business has operated on a “fractional share” basis. All agreements between publisher, writers, PROs and users have been negotiated within this framework. While there are frequent disagreements between these parties, the overarching concept of fractional share licensing is well-established and uncontested. There is nothing to gain from overturning decades of custom and no tangible benefit to any of the counterparties, but we do see the potential for numerous disruptions to the ordinary course of business:

1. PROS, publishers, and songwriters do not currently account to each other as would be legally required if they were licensing whole works when only in control of partial works. This would create a new, complex layer of accounting and administration in an industry trying to simplify its practices (and one that is already fraught with burdensome licensing and administration issues).
2. There would likely be far-reaching and unintended consequences – for example, a PRO could control a tiny fraction of a song and negotiate a rate far lower than what could be negotiated by the PRO (or publisher) of the majority owner.
3. More absurdly, a publisher who has withdrawn, either partially or fully, from a PRO in an effort to secure higher rates could nonetheless still be forced to accept a lower rate if a PRO licenses a portion of a song controlled by the publisher.

4. Parties lacking privity of contract would be forced to account to each other, making audit and other enforcement issues highly impractical and likely leading to unnecessary litigation.

5. Agreements between publishers and their songwriters often don't provide the right to collect 100% of revenue and no mechanism exists for the appropriate representations, warranties and indemnities to deal with the additional obligations and potential exposure.

For these reasons we respectfully request that the DOJ leave in place the current mechanism of "100% licensing." The notion of "fractional licensing" should be removed from consideration so that proper focus can be placed on the true, substantive issues at hand.

Respectfully submitted by,
DOWNTOWN MUSIC PUBLISHING, LLC

Andrew Bergman
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