

November 10, 2015

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

Re: Justice Department Review of the BMI and ASCAP Consent Decrees

To the Chief of the Litigation III Section:

My name is Michael Penn and I am an American songwriter and composer. I've been an affiliate of BMI for over 25 years and I can't overstate how important BMI has been for me throughout my career. I've been at this a long time and I'm blessed to be successful at it. I've been loyal to BMI throughout because they've always looked out for me and my music. They understand that creative work has value and for a quarter of a century have made sure that my rights have been protected and that I have been fairly compensated. I have long standing and trusted relationships at BMI. Let me point out that uniquely and unfortunately, songwriters and composers have no union. The only real advocacy groups we have are the performance rights organizations. Especially now, as records, CDs and the concept of music ownership vanishes in favor of a streaming model, the Performance Rights organizations are increasingly vital in insuring that my livelihood remains viable.

I'm writing in response to the Justice Department's request for public comments on the issue of whether BMI and ASCAP's consent decrees mandate music licensing on a 100% basis, rather than the long-established industry practice of fractionally licensing jointly-owned songs.

If 100% licensing became a requirement it would severely restrict my creative freedom as well as my ability to determine which PRO licenses my music. It would undoubtedly negatively impact all American songwriters, who are already grappling with the profound effects of the emerging new economic model of our business.

100% licensing would mean I would only be able to collaborate with fellow BMI songwriters or run the risk of not being fairly compensated for my work. The only way to insure that my royalties flow through my trusted partners at BMI would

be to only work with fellow BMI songwriters.

The only way to insure that the licensing fees I would receive would be those negotiated by my PRO would be to limit collaborations.

The only way for me to control where and how my music would be used would be to limit my collaborations.

Otherwise, under this proposal, my co-written works could be licensed by, and I would be paid by, a PRO that represents only my co-writers' share.

The licensing fee the other PRO charges might be lower than the one BMI has negotiated or fought for in rate court, and despite my chosen affiliation, I would have to accept the lower fee.

My royalties could also be delayed since they would have to flow through two PROs.

The PROs have an established fractional system that is fair and serves American songwriters well.

It's also a system that benefits from the fact that these organizations understand the mechanics of songwriting, so they are able to understand what fair compensation means. Requiring the PROs to license music on a 100% basis would both limit creative options for songwriters as well as further erode the art of songwriting as a livelihood.

Sincerely,

Michael Penn